

PUNJAB EXCISE MANUAL.

VOLUME I.

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PREFACE.

THE Punjab Excise Manual is meant for the use of Departmental Officers. It consists of four volumes. Volume I contains the Acts and important High Court Rulings ; Volume II contains all the notifications issued under the Acts ; Volume III contains Executive instructions and Volume IV contains the forms. The previous practice whereby notifications were reproduced *in extenso* in the Executive instructions has been abandoned.

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THE SCHEDULE.

**The Punjab Excise Act (I of 1914), as amended by the
Devolution Act, 38 of 1920, The Punjab Excise
Amendment Act, II of 1925, and the
Dangerous Drugs Act, II of 1930.**

CHAPTER I.

PRELIMINARY AND DEFINITIONS.

1. Short title.—(1) This Act may be called the Punjab Excise Act, 1914 ; and

(2). *Extent.*—It extends to the whole of the Punjab.

(3). *Commencement.*—It shall come into force on such date as the Local Government may by notification direct.

The Act was brought into force with effect from the 1st of February 1914 (P. G. N. 112 dated 23rd January 1914).

2. Repeal of enactments.—The enactments mentioned in the Schedule are repealed to the extent specified in the fourth column thereof.

3. Definitions.—In this Act, and the rules made under it, unless there is something repugnant in the subject or context,—

(1) “ beer ” includes ale, porter, stout, and all other fermented liquors made from malt ;

(2) “ to bottle ” means to transfer liquor from a cask or other vessel to a bottle, jar, flask, or similar receptacle whether any process of manufacture be employed or not, and bottling includes rebottling ;

(3) “ Collector ” includes any revenue officer in independent charge of a district and any official appointed by the Local Government to discharge, throughout any specified local area, the functions of a Collector under this Act ;

(4) “ Commissioner ” means the chief officer in charge of the revenue administration of a division ;

(5) “ denatured ” means effectually and permanently rendered unfit for human consumption ;

(6) “ excisable article ” means and includes any liquor or intoxicating drug as defined by or under this Act ;

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- (7) "Excise Commissioner" means the officer appointed by the Local Government under section 9;
- (8) "excise officer" means any officer or person appointed, or invested with powers, under this Act;
- (9) "excise revenue" means revenue derived or derivable from any payment, duty, fee, tax, confiscation or fine, imposed or ordered under the provisions of this Act, or of any other law for the time being in force relating to liquor or intoxicating drugs, but does not include a fine imposed by a court of law;
- (10) "export" means to take out of the Punjab; Provided that, in the case of intoxicating drugs specified in sub-clauses (i), (ii) and (iii) of clause (18), it means to export inter-provincially, as defined in clause (j) of section 2 of the Dangerous Drugs Act, 1930;
- (11) "Financial Commissioners" means—
there are more Financial Commissioners than one, he construed as meaning one or more of the Financial Commissioners;
- (12) "import" means to bring into the Punjab; Provided that, in the case of intoxicating drugs specified in sub-clauses (i), (ii) and (iii) of clause (18), it means to import inter-provincially, as defined in clause (j) of section 2 of the Dangerous Drugs Act, 1930;
- (13) "intoxicating drug" means—
- (i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (*Cannabis Sativa L.*) including all forms known as *bhang*, *Saddhi* or *gunja*;
 - (ii) *charas*, that is, the resin obtained from the Indian hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport;
 - (iii) any mixture, with or without neutral materials of any of the above forms of intoxicating drug or any drink prepared therefrom; and

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- (iv) any other intoxicating or narcotic substance which the Local Government may, by notification, declare to be an intoxicating drug, such substance not being opium, coca leaf, or a manufactured drug, as defined in section 2 of the Dangerous Drugs Act, 1930;
- (14) " liquor " means intoxicating liquor and includes all liquid consisting of or containing alcohol; also any substance which the Local Government may by notification declare to be liquor for the purposes of this Act ;
- (15) " magistrate " means any magistrate exercising powers not less than those of a magistrate of the second class, or any magistrate of the third class specially authorised in this behalf by the district magistrate ;
- (16) " manufacture " includes every process, whether natural or artificial, by which any excisable article is produced or prepared, and also re-distillation, and every process for the rectification, reduction, flavouring, blending or colouring of liquor ;
- (17) " place " includes a building, shop, tent, enclosure, booth, vehicle, vessel, boat and raft ;
- (18) expressions referring to " sale " include any transfer otherwise than by way of gift ;
- (19) " spirit " means any liquor containing alcohol obtained by distillation, whether denatured, or not ;
- (20) " tari " means fermented or unfermented juice drawn from any kind of palm tree ;
- (21) " transport " means to move from one place to another within the Punjab.

4. " *Country liquor* " and " *foreign liquor* ."—The Local Government may, by notification declare what, for the purposes of this Act or any portion thereof, shall be deemed to be " country liquor " and " foreign liquor " : provided that where the interests of any other Province may be affected, no such declaration shall be made without the previous sanction of the Governor-General in Council.

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5. Power of Local Government to declare limit of sale by retail and by whole sale.—The Local Government may by notification declare, with respect either to the whole of the Punjab or to any local area comprised therein, and as regards purchasers generally or any specified class of purchasers, and generally or for any specified occasion, the maximum or minimum quantity or both of any excisable article which for the purposes of this Act may be sold by retail and by wholesale.

6. Power to limit application of notifications, permits, &c., made under this Act.—Where under this Act any notification is made, any power conferred, any appointment made or any license, pass or permit granted, it shall be lawful to direct—

- (a) that it shall apply to the whole of the Punjab or to any specified local area or areas;
- (b) that it shall apply to all or any specified excisable article or articles or classes thereof;
- (c) that it shall apply to all or any class or classes of persons or officers;
- (d) that it shall be in force only for some special period or occasion.

7. Saving of enactments.—Save as provided by the Schedule, nothing contained in this Act shall affect the provisions of the Sea Customs Act, 1878, the Cantonments Act, 1910, or the Indian Tariff Act, 1891, or any rule or order made thereunder.

CHAPTER II.

ESTABLISHMENT AND CONTROL.

8. Superintendence and control of the excise administration and excise officers.—(a) Subject to the control of the Local Government and unless the Local Government shall by notification otherwise direct, the general superintendence and administration of all matters relating to excise shall vest in the Financial Commissioner.

(b) Subject to the general superintendence and control of the Financial Commissioner and unless the Local Government shall by notification otherwise direct, the Commissioner shall control all other excise officers in his division.

(c) Subject as aforesaid and to the control of the Commissioner and unless the Local Government shall by

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notification otherwise direct, the Collector shall control all other excise officers in his district.

9. Excise Commissioner.—The Local Government may by notification appoint an Excise Commissioner and, subject to such conditions and restrictions as it may deem fit, may invest him with all or any of the powers conferred on the Financial Commissioner by this Act.

10. Other classes of excise officers.—(a) There shall be such other classes of excise officers as the Local Government may by notification declare, and the Local Government may appoint as many persons as it deems fit to be excise officers of these classes.

(b) *Their powers.*—The Local Government shall by notification declare what powers under this Act shall be exercised by excise officers of each class.

(c) *Mode of conferring powers.*—In conferring powers under this Act the Local Government may empower persons by name or in virtue of their office or classes of officials generally by their official titles.

11. Power to invest persons with special powers under this Act.—The Local Government may by notification invest any person, not being an excise officer, with power to perform all or any of the functions of an excise officer under this Act, and such person shall in the exercise of these functions be deemed to be an excise officer.

12. Local limits of jurisdiction.—The jurisdiction of the Financial Commissioner and of the Excise Commissioner shall extend to the Punjab, the jurisdiction of Commissioners shall extend to their divisions, and the jurisdiction of Collectors and other excise officers shall, unless the Local Government shall otherwise direct, extend to the districts in which they are for the time being employed.

13. Delegation.—(a) The Local Government may by notification delegate to the Financial Commissioner or Commissioner all or any of its powers under this Act, except the powers conferred by sections 14, 21, 22, 31, 56 and 58 of this Act.

(b) The Local Government may by notification permit the delegation by the Financial Commissioner, Commissioner or Collector to any person or class of persons specified in such notification of any powers conferred by this Act or exercised in respect of excise revenue under any Act for the time being in force.

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14. Appeal.—An appeal shall lie from an original or appellate order of an excise officer in such cases or classes of cases and to such authority as the Local Government shall by notification declare.

15. Revision.—(a) The Financial Commissioner may at any time revise any order passed by any excise officer subordinate to him.

(b) A Commissioner or Collector may call for the record of any case pending before, or disposed of by, any excise officer subordinate to him, and, if he is of opinion that the proceedings taken or order made should be modified or reversed, he shall report the case with his opinion thereon for the orders of the Financial Commissioner:

Provided that the Financial Commissioner shall not under this section pass an order revising or modifying any proceeding or order of a subordinate excise officer and affecting any person without giving such person an opportunity of being heard.

CHAPTER III.

IMPORT, EXPORT AND TRANSPORT.

16. Import, export and transport of excisable articles.—No excisable article shall be imported, exported or transported except—

(a) after payment of any duty of customs, or excise to which it may be liable, or execution of a bond for such payment, and

(b) in compliance with such conditions as the Local Government may impose.

17. Power of Local Government to prohibit import, export and transport of excisable articles.—The Local Government may, by notification,—

(a) prohibit the import or export of any excisable article into or from the Punjab or any part thereof; or

(b) prohibit the transport of any excisable article:

provided that, where the interests of any other province may be affected, no notification shall be issued under clause (a) without the previous sanction of the Governor-General in Council.

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18. Passes necessary for import.

Except as otherwise provided by this Act, no excisable article exceeding one hundred rupees in value may be imported or transported except under the provisions of the next section.

Provided that in this section such passes shall be issued by the Government shall be no charge.

Provided, further, that passes determined by the Government under the excise laws shall be deemed to be issued by the Government.

19. Passes for export.

Passes for export may be issued by the Government.

Foreign liquor may be imported or transported under the Local Government.

Provided, further, that passes as may be issued by the Government, a pass granted by the Government of a particular province may be issued under this Act.

Export and transport.—
The transport of excisable articles

for the import and export of such articles the Financial Commissioner may from time to time grant passes, which shall be granted only by the Financial Commissioner.

CHAPTER IV.

MANUFACTURE, POSSESSION AND SALE.

A.—Manufacture.

The manufacture of excisable articles prohibited except under the provisions of this Act.

No excisable article shall be manufactured or

- (a) no hemp plant shall be cultivated,
- (b) no *tari*-producing tree shall be tapped,
- (c) no *tari* shall be drawn from any tree, and
- (d) no person shall use, keep or have in his possession, any materials, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing any excisable article other than *tari*,

except under the authority and subject to the terms and conditions of a license granted in that behalf by the Collector.

(2) No distillery or brewery shall be constructed or worked except under the authority and subject to the terms and conditions of a license granted in that behalf by the Financial Commissioner under section 21.

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21. Establishment or licensing of distilleries and breweries.—The Financial Commissioner, subject to such restrictions or conditions as the Local Government may impose, may—

- (a) establish a distillery in which spirit may be manufactured under a license granted under section 20;
- (b) discontinue any distillery so established;
- (c) license the construction and working of a distillery or brewery;
- (d) make rules regarding—
 - (1) the granting of licenses for distilleries, stills or breweries;
 - (2) the security to be deposited by the licensee of a distillery or brewery;
 - (3) the period for which the license shall be granted;
 - (4) the inspection and examination of such distillery or brewery and the warehouses connected therewith and of the spirit or fermented liquor made and stored therein;
 - (5) the management and working of the distillery or brewery;
 - (6) the form of accounts to be maintained and the returns to be submitted by the licensee;
 - (7) the up-keep of buildings and plant;
 - (8) the size and description of stills, and other plant;
 - (9) the manufacture, storing and passing out of spirit, and the contents of passes;
 - (10) the prices to be charged by the licensee;
 - (11) any other matters connected with the working of distilleries or breweries.

22. Establishment or licensing of warehouses.—The Financial Commissioner, subject to such restrictions or conditions as the Local Government may impose, may—

- (a) establish or license a warehouse wherein any excisable article may be deposited and kept without payment of duty;

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(b) discontinue any warehouse so established.

23. Removal of excisable article from distillery, etc.— No excisable article shall be removed from any distillery, brewery, warehouse, or other place of storage established or licensed under this Act, unless the duty (if any) imposed under section 31 has been paid or a bond has been executed for the payment thereof.

B.—Possession.

24. Possession of excisable articles.—(1) No person shall have in his possession any quantity of any excisable article in excess of such quantity as the Local Government has, under section 5, declared to be the limit of retail sale, except under the authority and in accordance with the terms and conditions of—

(a) a license for the manufacture, sale or supply of such article ; or

(b) in the case of intoxicating drugs, a license for the cultivation or collection of the plants from which such drugs were produced ; or

(c) a permit granted by the Collector in that behalf.

(2) *Exception.*—Sub-section (1) shall not apply to—

(a) any excisable article in the possession of any excise officer, common carrier or warehouseman as such ; or

(b) any foreign liquor which has been purchased by any person for his *bond fide* private consumption.

(3) A licensed vendor shall not have in his possession at any place, other than that authorized by his license, any quantity of any excisable article in excess of such quantity as the Local Government has under section 5 declared to be the limit of sale by retail, except under a permit granted by the Collector in that behalf.

(4) *Prohibition and restriction of possession of excisable articles in certain cases.*—Notwithstanding anything contained in the foregoing sub-sections, the Local Government may by notification prohibit the possession of any excisable article, or restrict such possession by such conditions as it may prescribe.

25. Prohibition of possession of excisable article, unlawfully manufactured, imported, &c.—No person shall have in his

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possession any quantity of any excisable article, knowing the same to have been unlawfully imported, transported, manufactured, cultivated or collected or knowing the prescribed duty not to have been paid thereon.

C.—Sale.

26. Sale of excisable articles.—No liquor shall be bottled for sale and no excisable article shall be sold, except under the authority and subject to the terms and conditions of a license granted in that behalf : provided that—

- (1) a person licensed under section 20 to cultivate the hemp plant may sell without a license those portions of the plant from which intoxicating drugs can be manufactured to any person licensed under this Act to deal in the same or to any officer whom the Financial Commissioner may appoint in this behalf;
- (2) a person having the right to the tari drawn from any tree may sell the same without a license to a person licensed to manufacture or sell tari under this Act ;
- (3) on such conditions as the Financial Commissioner may determine a license for sale under the excise law for the time being in force in other parts of British India may be deemed to be a license granted in that behalf under this Act ;
- (4) nothing in this section applies to the sale of any foreign liquor lawfully procured by any person for his private use and sold by him or on his behalf or on behalf of his representatives in interest upon his quitting a station or after his decease.

27. Grant of lease of manufacture, &c.—(1) The Local Government may lease to any person, on such conditions and for such period as it may deem fit, the right—

- (i) of manufacturing or of supplying, by wholesale, or of both, or
 - (ii) of selling by wholesale or by retail, or
 - (iii) of manufacturing or of supplying by wholesale, or of both, and of selling by retail,
- any country liquor or intoxicating drug within any specified local area.

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(2) The Collector shall grant to a lessee under sub-section (1) a license in the term of his lease ; and, when there is no condition in the lease which prohibits sub-letting, may, on the application of the lessee, grant a license to any sub-lessee approved by the Collector.

28. Manufacture and sale of liquor in military cantonments.—Within the limits of any military cantonment, and within such distance from those limits as the Local Government in any case may prescribe, no license for the manufacture or sale of liquor and no lease of the retail vend of liquor, such as is described in section 27, shall be granted unless with the consent of the Commanding Officer.

29. Prohibition of sale to persons under the age of eighteen years.—No licensed vendor and no person in the employ of such vendor or acting on his behalf shall sell or deliver any liquor or intoxicating drug to any person apparently under the age of eighteen years whether for consumption by such person or by another person and whether for consumption on or off the premises of such vendor.

30. Prohibition of employment of children under the age of sixteen years and of women.—(1) No person who is licensed to sell foreign liquor or country spirit for consumption on his premises shall, during the hours in which such premises are kept open for business, employ or permit to be employed, either with or without remuneration, any child under the age of sixteen years in any part of such premises in which such liquor or spirit is consumed by the public.

(2) No person who is licensed to sell foreign liquor or country spirit for consumption on his premises shall, without the previous permission in writing of the Collector, during the hours in which such premises are kept open for business, employ or permit to be employed, either with or without remuneration, any woman in any part of such premises in which liquor is consumed by the public.

(3) Every permission granted under sub-section (2) shall be endorsed on the license, and may be modified or withdrawn.

CHAPTER V.

DUTIES AND FEES.

31. Duty on excisable articles.—A duty, at such rate or rates as the Local Government shall direct, may be imposed,

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either generally or for any specified local area, on any excisable article—

- (a) imported, exported or transported in accordance with the provisions of section 16 ; or
- (b) manufactured or cultivated under any license granted under section 20 ; or
- (c) manufactured in any distillery established, or any distillery or brewery licensed under section 21 :

Provided as follows :—

- (i) Duty shall not be so imposed on any article

~~which has been imported into British India~~

~~or which has been imported into British India~~

- (ii) The duty on denatured spirit or beer manufactured in India, shall, unless the Local Government, with the previous sanction of the Governor-General in Council, otherwise directs, be equal to the duty to which denatured spirit or beer, respectively, imported into British India by sea is liable under the Indian Tariff Act, 1894, or any other law for the time being in force relating to the duties or customs on goods imported into British India.

Explanation.—Duty may be imposed under this section at different rates according to the places to which any excisable article is to be removed for consumption, or according to the varying strengths and quality of such article.

32. Manner in which duty may be levied.—Subject to such rules regulating the time, place and manner as the Financial Commissioner may prescribe, such duty shall be levied rateably, on the quantity of excisable article imported, exported, transported, collected or manufactured in, or issued from, a distillery, brewery or warehouse :

Provided that duty may be levied—

- (a) on intoxicating drugs by an acreage rate levied on the cultivation of the hemp plant, or by a rate charged on the quantity collected ;

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- (b) on spirit or beer manufactured in any distillery established, or any distillery or brewery licensed, under this Act in accordance with such scale of equivalents calculated on the quantity of materials used, or by the degree of attenuation of the wash or wort, as the case may be, as the Local Government may prescribe;
- (c) on *tari*, by a tax on each tree from which the *tari* is drawn:

Provided further that, where payment is made upon issue of an excisable article for sale from a warehouse established or licensed under section 22 (a), it shall be made,—

- (a) if the Local Government by notification so directs, at the rate of duty which was in force at the date of import of that article, or
- (b) in the absence of such direction by the Local Government, at the rate of duty which is in force on that article on the date when it is issued from the warehouse.

33. Payment for grant of leases.—Instead of or in addition to any duty leviable under this chapter the Local Government may accept payment of a sum in consideration of the lease of any right under section 27.

CHAPTER VI.

LICENSES, PERMITS AND PASSES.

34. Fees for, terms, conditions and form of, and duration of, licenses, permits and passes.—(1) Every license, permit or pass granted under this Act shall be granted—

- (a) on payment of such fees, if any,
- (b) subject to such restrictions and on such conditions,
- (c) in such form and containing such particulars,
- (d) for such period,

as the Financial Commissioner may direct.

(2) *Security.*—Any authority granting a license under this Act may require the licensee to give such security for the observance of the terms of his license, or to make such deposit in lieu of security, as such authority may think fit.

35. Grant of licenses for sale.—(1) Subject to the rules made by the Financial Commissioner under the powers conferred by this Act, the Collector may grant licenses for the sale of any excisable article within his district.

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(2) *Ascertainment of public opinion.*—Before any license is granted in any year for the retail sale of liquor for consumption on any premises which have not been so licensed in the preceding year, the Collector shall take such measures, in accordance with rules to be made by the Local Government in this behalf, as may best enable him to ascertain local public opinion in regard to the licensing of such premises.

(3) A license for sale in more than one district of the Punjab shall be granted by the Financial Commissioner only.

36. Power to cancel or suspend licenses, etc.—Subject to such restrictions as the Local Government may prescribe, the authority granting any license, permit or pass under this Act may cancel or suspend it—

- (a) if it is transferred or sublet by the holder thereof without the permission of the said authority ; or
- (b) if any duty or fee payable by the holder thereof has not duly paid ; or
- (c) in the event of any breach by the holder of such license, permit or pass or by his servants, or by his express or in terms or conditions pass ; or
- (d) if the holder thereof is convicted of any offence punishable under this Act or any other law for the time being in force ; or

- (e) if the holder thereof is punished for any offence referred to in clause (6) of section 167 of the Sea Customs Act, 1878 ; or
- (f) where a license, permit or pass has been granted on the application of the grantee of a lease under this Act, on the requisition in writing of such grantee ; or
- (g) at will, if the conditions of the license or permit provide for such cancellation or suspension.

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37. Power to cancel any other license.—When a license, permit or pass held by any person is cancelled under clause (a), (b), (c), (d) or (e) of section 36, the authority aforesaid may cancel any other license, permit or pass granted to such person within the same district under this Act or under any other law for the time being in force relating to excise revenue or under the Opium Act, 1878, and the Financial Commissioner may cancel any such license, permit or pass granted to such person in any district to which this Act applies.

38. Power to recover fee.—In the case of cancellation or suspension of a license under clause (a), (b), (c), (d) or (e) of section 36, the fee payable for the balance of the period for which any license would have been current but for such cancellation or suspension, may be recovered from the ex-licensee as excise revenue.

39. Power of Collector to take grants under management or to resell.—If any holder of a license granted under this Act, or any person to whom a lease has been granted under section 27, makes default in complying with any condition imposed upon him by such license or lease, the Collector may take the grant under management at the risk of the person who has so defaulted or may resell it and recover in the manner laid down in section 60 of this Act any deficiency in price and all expenses of such resale.

40. No compensation or refund claimable for cancellation or suspension of license, etc., under this section.—When a license, permit or pass is cancelled or suspended under clause (a), (b), (c), (d) or (e) of section 36 or under section 37, the holder shall not be entitled to any compensation for its cancellation or suspension nor to the refund of any fee paid or deposit made in respect thereof.

41. Power to withdraw licenses.—(1) Whenever the authority which granted a license, permit or pass under this Act considers that such license, permit or pass should be withdrawn for any cause other than those specified in section 36, it may, on remitting a sum equal to the amount of the fees payable in respect thereof for fifteen days, withdraw the license either—

(a) on the expiration of fifteen days' notice in writing of its intention to do so, or

(b) forthwith without notice.

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of compensation as the Financial Commissioner may direct.

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Government.

42. Technical irregularities in license, &c.—(1) No license, permit or pass granted under this Act shall be deemed to be invalid by reason merely of any technical defect, irregularity or omission in the license or in any proceedings taken prior to the grant thereof.

(2) The decision of the Financial Commissioner as to what is a technical defect, irregularity or omission shall be final.

43. No claim in consequence of refusal to renew a license, &c.—No person to whom a license, permit or pass may have been granted shall be entitled to claim any renewal thereof.

44. Surrender of license.—(1) No holder of a license granted under this Act to sell an excisable article shall surrender his license except on the expiration of one month's notice in writing given by him to the Collector of his intention to surrender the same and on payment of the fee payable for the license for the whole period for which it would have been current but for the surrender :

Provided that, if the Collector is satisfied that there is sufficient reason for surrendering the license, he may remit to the holder thereof the sum so payable on surrender or any portion thereof.

(2) Sub-section (1) shall not apply in the case of any license granted under section 27 (2).

Explanation.—The words "holder of a license" as used in this section include a person whose tender or bid for a license has been accepted, although he may not actually have received the license.

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CHAPTER VII.

POWERS AND DUTIES OF OFFICERS, ETC.

45. *Power to enter and inspect places of manufacture and sale.*—Any excise officer not below such rank as the Local Government may prescribe may—

- (a) enter and inspect, at any time by day or by night, any place in which any licensed manufacturer carries on the manufacture of or stores any excisable article ;
- (b) enter and inspect, at any time within the hours during which sale is permitted, and at any other time during which the same may be open, any place in which any excisable article is kept for sale by any person holding a license under this Act ;
- (c) examine accounts and registers, test, measure or weigh any materials, stills, utensils, implements, apparatus or excisable article found in that place ;
- (d) seize any accounts, registers, measures, weights or testing instruments which he has reason to believe to be false.

46. *Powers of excise officers to investigate offences punishable under this Act.*—(1) The Local Government may by notification invest any excise officer, not below the rank of sub-inspector, with power to investigate any offence punishable under this Act committed within the limits of the area in which the officer exercises jurisdiction.

(2) Every officer so empowered may within those limits exercise the same powers in respect of such investigation as an officer in charge of a police station may exercise in a cognizable case under the provisions of chapter XIV of the Code of Criminal Procedure, 1898.

47. *Powers of arrest, seizure and detention.*—Any officer of the excise, police, salt, or land revenue department, not below such rank and subject to such restrictions as the Local Government may prescribe, and any other person duly empowered by notification by the Local Government in this behalf, may arrest without warrant any person found committing an offence punishable under section 61, or section 63,

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other article which
fiscation under this
relating to excise
revenue; and may detain and search any person upon whom,
and any vessel, raft, vehicle, animal, package, receptacle
or covering in or upon which he may have reasonable cause
to suspect any such article to be.

48. Power of magistrate to issue warrant for search or arrest.—A magistrate having reason to believe that an offence under section 61 or 63 has been, is being, or is likely to be, committed, may—

- (a) issue a warrant for the search of any place in which he has reason to believe that any excisable article, still, utensil, implement, apparatus or materials, in respect of which such offence has been, is being, or is likely to be committed, are kept or concealed ; and
- (b) issue a warrant for the arrest of any person whom he has reason to believe to have been, to be, or to be likely to be, engaged in the commission of any such offence.

49. Power of excise officer to search without warrant.—

(1) Whenever any excise officer not below such rank as the Local Government may by notification prescribe, has reason to believe that an offence punishable under section 61, section 62, section 63, or section 64, has been, is being, or is likely to be, committed in any place, and that a search-warrant cannot be obtained without affording the offender an opportunity of escape or of concealing evidence of the offence, he may, at any time, by day or night, enter and search such place.

(2) *Further powers of seizure, detention, search and arrest.*—Every excise officer as aforesaid may seize anything found in such place which he has reason to believe to be liable to confiscation under this Act, and may detain and search and, if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty of such offence as aforesaid.

50. Procedure relating to arrests, searches, &c.—Save as in this Act otherwise expressly provided, the provisions of the Code of Criminal Procedure, 1898, relating to arrests, deten-

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tions in custody, searches, summonses, warrants of arrest, search-warrants, production of persons arrested and investigation of offences shall be held to be applicable to all action taken in these respects under this Act :

Provided that—

(1) any offence under this Act may be investigated by an officer empowered under section 46 without the order of a magistrate ;

(2) whenever an excise officer below the rank of Collector makes any arrest, seizure or search, he shall within twenty-four hours thereafter make a full report of all the particulars of the arrest, seizure or search to his immediate official superior, and shall, unless bail be accepted under section 73, take or send the person arrested, or the article seized, with all convenient despatch to a magistrate for trial or adjudication.

51. Police to aid excise officers.—All police officers are required to aid the excise officers in the due execution of this Act, upon request made by such excise officers.

52. Duty of landholders and others to give information.—

(a) Every owner or occupier of land and the agent of any owner or occupier of land on which—

(b) Every lambardar, village headman, village accountant, village watchman, village policeman and every officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards in whose village—

there shall be any manufacture or illegal import or collection of any excisable article not licensed under this Act, or any unlawful cultivation of any plants from which an intoxicating drug can be produced;

shall be bound, in the absence of reasonable excuse, to give notice of the same to a magistrate or to an officer of the excise, police or land revenue department as soon as the fact comes to his knowledge.

53. Duty of officer in charge of police station to take charge of articles seized.—Every officer in charge of a police station shall take charge of, and keep in safe custody, pending the orders of a magistrate, or of the Collector or of an officer empowered under section 46 (1) to investigate the case, all articles seized under this Act which may be delivered to him,

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and shall allow any excise officer who may accompany such articles to the police station, or may be deputed for the purpose by his superior officer to affix his seal to the articles and to take samples of and from them. All samples so taken shall also be sealed with the seal of the officer in charge of the police station.

54. Power to close shops for the sake of public peace.—

..... Sab-Divisional Magistrate by
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..... be closed at such
times or for such period as he may think necessary for the
preservation of the public peace.

(2) If a riot or unlawful assembly is apprehended or occurs in the vicinity of any such shop, a magistrate of any class may require such shop to be kept closed for such period as he may think necessary :

Provided that where any such riot or unlawful assembly occurs the licensee shall, in the absence of a magistrate, close his shop without any order.

(3) When any Sab-Divisional Magistrate makes a direction under sub-section (1) or any magistrate makes a direction under sub-section (2), he shall forthwith inform the Collector of his action and his reasons therefor.

It should be observed that although the word "magistrate" is defined in section 3 (16) of this Act as excluding all third class magistrates who are not specially authorised in this behalf by the District Magistrate, nevertheless action under sub-section (2) may be taken by any magistrate.

CHAPTER VIII.

GENERAL PROVISIONS.

55. Measures, weights and testing instruments.—Every person who manufactures or sells any excisable article under a license granted under this Act shall be bound—

(a) to supply himself with
instruments a
may prescribe,
condition ; and

(b) on the requisition of any excise officer, duly empowered by the Collector in that behalf, at any time to measure, weigh or test any excisable article in his possession in such manner as the said excise officer may require.

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56. Power of Local Government to exempt excisable articles from the provisions of the Act.—The Local Government may by notification, either wholly or partially and subject to such conditions as it may think fit to prescribe, exempt any excisable article from all or any of the provisions of this Act.

57. Bar of certain suits.—No suit shall lie in any civil court against the Secretary of State for India in Council or any officer or person for damages for any act in good faith done, or ordered to be done, in pursuance of this Act or of any other law for the time being in force relating to the excise revenue.

58. Powers of Local Government to make rules.—(1) The Local Government may, by notification, make rules for the purpose of carrying out the provisions of this Act or any other law for the time being in force relating to excise revenue.

(2) In particular, and without prejudice to the generality of the foregoing provision, the Local Government may make rules—

- (a) prescribing the duties of excise officers ;
- (b) regulating the delegation of any powers by the Financial Commissioner, Commissioner or Collector, under section 13, clause (b) ;
- (c) prescribing the time and manner of presenting, and the procedure for dealing with, appeals from orders of excise officers ;
- (d) regulating the import, export, transport or possession of any excisable article ;
- (e) regulating the periods and localities for which, and the persons, or classes of persons, to whom, licenses, permits and passes for the vend by wholesale or by retail of any excisable article may be granted and regulating the number of such licenses which may be granted in any local area ;
- (f) prescribing the procedure to be followed and the matters to be ascertained before any license is granted for the retail vend of liquor for consumption on the premises ;
- (g) for the prohibition of the sale of any excisable article to any person or class of persons ;

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- (h) regulating the power of excise officers to summon witnesses from a distance;
- (i) regulating the grant of expenses to witnesses and compensation to persons charged with offences under this Act and subsequently released, discharged or acquitted;
- (j) for the prohibition of the employment by a licensee-holder of any person or class of persons to assist in his business in any capacity whatsoever;
- (k) for the prevention of drunkenness, gambling and disorderly conduct in or near any licensed premises, and the meeting or remaining of persons of bad character in such premises.

Provided that any such rules may be made without previous publication if the Local Government consider that they should be brought into force at once.

59. Powers of Financial Commissioner to make rules.— The Financial Commissioner may, by notification, make rules—

- (a) regulating the manufacture, supply, storage or sale of any excisable article, including—
 - (i) the character, erection, alteration, repair, inspection, supervision, management and control of any place for the manufacture, supply, storage or sale of such article and the fittings, implements, apparatus and registers to be maintained therein;
 - (ii) the cultivation of the hemp plant and the collection of spontaneous growth of such plant and the preparation of any intoxicating drug;
 - (iii) the tapping or drawing of tari from any tari-producing tree;
- (b) regulating the bottling of liquor for purposes of sale;

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- (c) regulating the deposit of any excisable article in a warehouse and the removal of any excisable article from any warehouse or from any distillery or brewery ;
- (d) prescribing the scale of fees or the manner of fixing the fees payable in respect of any license, permit or pass, or in respect of the storing of any excisable article ;
- (e) regulating the time, place and manner of payment of any duty or fee ;
- (f) prescribing the authority by, the restrictions under and the conditions on, which any license, permit or pass may be granted including provision for the following matters :—
 - (i) the prohibition of the admixture with any excisable article of any substance deemed to be noxious or objectionable ;
 - (ii) the regulation or prohibition of the reduction of liquor by a licensed manufacturer or licensed vendor from a higher to a lower strength ;
 - (iii) the fixing of the strength, or price below which any excisable article shall not be sold, supplied or possessed ;
 - (iv) the prohibition of sale of any excisable article except for cash ;
 - (v) the fixing of the days and hours during which any licensed premises may or may not be kept open, and the closure of such premises on special occasions ;
 - (vi) the specification of the nature of the premises in which any excisable article may be sold, and the notices to be exposed at such premises ;
 - (vii) the form of the accounts to be maintained and the returns to be submitted by license-holders ; and
 - (viii) the prohibition or regulation of the transfer of licenses :
- (g) (i) declaring the process by which spirit shall be denatured ;

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- (ii) for causing spirit to be denatured through the agency or under the supervision of its own officers;
 - (iii) for ascertaining whether such spirit has been denatured;
 - (l) providing for the destruction or other disposal of spirituous articles for the purpose of preventing their use;
 - (2)
 - (3)
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same.

60. Recovery of dues.—(1) The following monies, namely,—

- (a) all excise revenue,
- (b) any loss that may accrue, when in consequence of default a grant has been taken under management by the Collector or has been resold by him under section 39, and
- (c) all amounts due to Government by any person on account of any contract relating to the excise revenue,

may be recovered from the person primarily liable to pay the same, or from his surety (if any), by distress and sale of his moveable property, or by any other process for the recovery of arrears of land revenue due from land-holders or from farmers of land or their sureties.

(2) When a grant has been taken under management by the Collector or has been resold by him under section 39, the Collector may recover, in any manner authorized by subsection (1), any money due to the defaulter by any lessee or assignee.

(3) In the event of default by any person licensed or holding a lease under this Act all his distillery, brewery, warehouse or shop, premises, fittings or apparatus and all stocks of excisable articles or materials for manufacture of the same held in or upon any distillery, brewery, warehouse or shop premises shall be liable to be sold in payment of any claim for excise duty or other amount due and unpaid by Government. The amount so paid shall be used to satisfy such claim, which shall be a first charge upon the sale-proceeds.

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CHAPTER IX.

OFFENCES AND PENALTIES.

61. Penalty for unlawful import, export, transport, manufacture, possession, &c.—(1) Whoever, in contravention of any section of this Act or of any rule, notification issued or given thereunder or order made, or of any license, permit or pass granted under this Act,—

- (a) imports, exports, transports, manufactures, collects or possesses any excisable article ; or
- (b) constructs or works any distillery or brewery ; or
- (c) uses, keeps or has in his possession any materials, still, utensil, implement or apparatus whatsoever, for the purpose of manufacturing any excisable article other than *tari* ;

shall be punishable for every such offence with imprisonment for a term which may extend to two years or with fine which may extend to two thousand rupees, or with both.

(2) Penalty for unlawful import, export, transport, manufacture, possession, sale, &c.—Whosoever, in contravention of any section other than sections 29 and 30 of this Act or of any rule, notification issued or given thereunder, or order made, or of any license, permit or pass granted under this Act—

- (a) sells any excisable article ; or
- (b) cultivates the hemp plant ; or
- (c) removes any excisable article from any distillery, brewery or warehouse established or licensed under this Act ; or
- (d) bottles any liquor for the purposes of sale ; or
- (e) taps or draws *tari* from any *tari*-producing tree ;

shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees, or with both :

It should be noted, moreover, that the infliction of a penalty under this chapter does not debar the Collector from cancelling a license under section 36 or section 37.

Section 61 (1) (b) refers to distilleries and breweries as the terms are generally understood ; large works not as a rule capable of concealment. A case might arise of illicit distillation being carried on, in so large a scale as to come under this sub-clause, but no such case has so far arisen, and the sub-clause should not be applied to the ordinary illicit still found in the Punjab, which is covered by sub-clause 61 (1) (a).

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Doubt often arises as to whether punishment should be asked for under both sub-clauses 61 (1) (a) and 61 (1) (c).

Such cases arise—

- (1) when a still at work is seized with a quantity of liquor and of the resultant spirit.
- (2) when illicitly distilled spirit and liquor are seized without apparatus.
- (3) when apparatus and liquor is seized.
- (4) when illicitly distilled spirit and apparatus not at work are seized.

In such cases there is a certain degree of overlapping, as (a) covers "manufacture"

It is not easy to lay down general rules; but if a reference is made in each case to section 71 of the Indian Penal Code and section 35 of the Criminal Procedure Code, and care is taken to distinguish between distinct offences and separate offences, i.e., the separable elements—in themselves offences—of one combined offence, no difficulty should arise.

62. Penalty for unlawfully selling to persons under eighteen, or employing children or women.—If any licensed vendor, or any person in his employ or acting on his behalf—

- (a) in contravention of section 29 sells or delivers any liquor or intoxicating drug to any person apparently under the age of eighteen years; or
- (b) in contravention of section 30 employs or permits to be employed on any part of his licensed premises referred to in that section any child under the age of sixteen years or women; or
- (c) sells any excisable article to a person who is drunk or intoxicated; or
- (d) permits drunkenness, intoxication, disorderly conduct or gaming on the licensed premises of such licensed vendor; or
- (e) permits any person whom he knows or has reason to believe to have been convicted of any non-bailable offence or any reputed prostitute to frequent his licensed premises, whether for the purposes of crime or prostitution or not;

he shall in addition to any other penalty to which he may be liable be punishable with a fine which may extend to five hundred rupees.

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When any licensed vendor or any person in his employ or acting on his behalf is charged with permitting drunkenness or intoxication on the licensed premises of such vendor, and it is proved that any person was drunk or intoxicated on such premises, it shall lie on the person charged to prove that the licensed vendor or the person employed by him or acting on his behalf took all reasonable steps for preventing drunkenness or intoxication on such premises.

63. Penalty for attempting to render denatured spirits fit for human consumption.—Whoever attempts to render fit for human consumption any spirit, whether manufactured in British India or not, which has been denatured, or has in his possession any spirit in respect of which he knows or has reason to believe that any such attempt has been made, shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

Here it should be observed that it is the attempt to convert denatured spirit which is punishable. Actual conversion is not an essential part of the offence.

64. Penalty for fraud by licensed manufacturer or vendor or his servant.—If any licensed manufacturer or licensed vendor or any person in his employ or acting on his behalf —

(a) sells, or keeps, or exposes for sale, as foreign liquor any liquor which he knows or has reason to believe to have been manufactured from rectified spirit or country liquor ; or

(b) marks any bottle, case, package or other receptacle containing liquor so manufactured from rectified spirit or country liquor, or the cork of any such bottle, or deals with any bottle, case, package or other receptacle containing such liquor with the intention of causing it to be believed that such bottle, case, package, or other receptacle contains foreign liquor ;

he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Indian-made whisky, brandy and gin are manufactured from plain spirit. Thus every distiller who makes these sophisticated spirits is technically guilty of an offence under this section. As, however, the sanction of the Collector is under section 75 of the Act necessary before a prosecution under this section can be instituted, there is little danger of its being abused.

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65. Penalty for certain acts by licensee or his servant.— Whoever, being the holder of a license, permit or pass granted under this Act, or being in the employ of such holder or acting on his behalf,—

- (a) fails wilfully to produce such license, permit or pass on the demand of any excise officer or of any other officer duly empowered to make such demand ; or
- (b) in any case not provided for in section 61 wilfully contravenes any rule made under section 58 or section 59 ; or
- (c) wilfully does or omits to do anything in breach of any of the conditions of the license, permit or pass not otherwise provided for in this Act ;

shall be punishable in case (a) with fine which may extend to two hundred rupees, and in case (b) or case (c) with fine which may extend to five hundred rupees.

66. Penalty for consumption in chemists' shops, &c.—

(1) If any chemist, druggist, apothecary or keeper of a dispensary allows any excisable article which has not been bona fide medicated for medicinal purposes to be consumed on his business premises by any person not employed in his business, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

(2) If any person not employed as aforesaid consumes any such excisable article on such premises, he shall be punishable with a fine which may extend to two hundred rupees.

67. Manufacture, sale or possession by one person on account of another—(1) When any excisable article has been manufactured or sold or is possessed by any person on account of any other person and such other person knows or has reason to believe that such manufacture or sale was, or that such possession is, on his account, the article shall for the purposes of this Act be deemed to have been manufactured or sold by or to be in the possession of such other person.

(2) Nothing in sub-section (1) shall absolve any person who manufactures, sells or has possession of an excisable article on account of another person from liability to any punishment under this Act for the unlawful manufacture, sale or possession of such article.

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68. Penalty for offences not otherwise provided for.—

Whoever is guilty of any act or intentional omission in contravention of any of the provisions of this Act, or of any rule, notification or order made, issued or given thereunder and not otherwise provided for in this Act, shall be punishable for every such act or omission with a fine which may extend to two hundred rupees.

69. Attempt to commit offences punishable under the Act.—

Whoever attempts to commit or abets any offence punishable under this Act shall be liable to the punishment provided for the offence.

70. Penalty for excise officer making vexatious search etc.—

- (a) vexatiously and unnecessarily enters or searches, or causes to be entered or searched, any place under colour of exercising any power conferred by this Act ; or
- (b) vexatiously and unnecessarily seizes the moveable property of any person on the pretence of seizing or searching for any article liable to confiscation under this Act ; or
- (c) vexatiously and unnecessarily searches, arrests or detains any person ; or
- (d) without lawful excuse ceases or refuses to perform or withdraws himself from the duties of his office unless expressly allowed to do so in writing by the Collector or unless he shall have given to his immediate superior officer two months' notice in writing of his intention to do so ;

he shall be liable to imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

71. Report by investigating officer for institution of proceedings.—

If on an investigation by an excise officer, empowered under section 46, sub-section (1), it appears that there is sufficient evidence to justify the prosecution of the accused, the investigating officer, unless he submits the case for the orders of the Collector under section 80, shall submit a report (which shall for the purposes of section 190 of the Code of Criminal Procedure, 1882, be deemed to be a police

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report) to a magistrate having jurisdiction to enquire into or try the case and empowered to take cognizance of offences on police reports.

72. Offences to be bailable.—All offences punishable under this Act shall be bailable within the meaning of the Code of Criminal Procedure, 1898.

73. Security for appearance in case of arrest without warrant.—(1) The Local Government may empower any excise officer to grant bail, notwithstanding that such officer is not empowered under section 46.

(2) When a person is arrested under this Act, otherwise than on warrant, by a person or officer who is not empowered to grant bail, he shall be produced before or forwarded to—

- (a) the nearest excise officer empowered to grant bail, or
- (b) the nearest officer in charge of a police station, whoever is nearer.

(3) Whenever any person arrested under this Act, otherwise than on a warrant, is prepared to give bail, and is arrested by, or produced in accordance with sub-section (2) before an officer empowered to grant bail, he shall be released upon bail, or, at the discretion of the officer releasing him, on his own bond.

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bond under this section.

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1898, shall apply, so
ail is accepted or a

74. *Repealed.

75. Cognizance of offences.—(1) No magistrate shall take cognizance of an offence punishable—

- (a) under section 61 or section 66, except on his own knowledge or suspicion or on the complaint or report of an excise officer, or
- (b) under section 60

authorized by him in that behalf.

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(2) Except with the special sanction of the Local Government, no magistrate shall take cognizance of any offence punishable under this Act, unless the prosecution is instituted within a year after the date on which the offence is alleged to have been committed.

It is noteworthy that under the Act a magistrate may take cognizance of an offence under section 61 or 66 of the Act on his own knowledge or suspicion.

76. Presumption as to commission of offence in certain cases.—Whenever any person is found in possession of—

- (a) any still, utensil, implement or apparatus whatsoever or any part or parts thereof, such as are ordinarily used for the manufacture of any excisable article other than *tari*,
- (b) any materials which have undergone any process towards the manufacture of an excisable article or from which an excisable article has been manufactured,

it shall be presumed, until the contrary is proved, that his possession was in contravention of the provisions of this Act.

The wording of this section makes it compulsory for the magistrate to presume the possession to be illicit until the contrary is proved.

77. Liability of employer for offence committed by employé or agent.—The holder of a license, permit or pass under this Act, as well as the actual offender, shall be liable to punishment for any offence punishable under section 61, section 62, section 63, section 64 or section 65, committed by any person in his employ or acting on his behalf as if he had himself committed the same, unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of such offence :

Provided that no person other than the actual offender shall be punished with imprisonment except in default of payment of fine.

78. Confiscation of article in respect of which offence committed.—(1) Whenever an offence punishable under this Act has been committed,—

- (a) every excisable article in respect of which such offence has been committed ;
- (b) every still, utensil, implement or apparatus and all materials in respect of or by means of which such offence has been committed ;

(c) every excisable article lawfully imported, transported, manufactured, had in possession or sold along with, or in addition to, any excisable article liable to confiscation under clause (a) ;

(d) every receptacle, package and covering in which any excisable article, materials, still, utensil, implement or apparatus as aforesaid is or are found together with the other contents (if any) of such receptacle or package ; and

(e) every animal, cart, vessel, raft or other conveyance used in carrying such receptacle, package, covering or articles as aforesaid ;

shall be liable to confiscation :

Provided that when it is proved that the receptacles, ~~and (a) and (c)~~ are to ~~be~~ committed, ~~no reason~~ to be

committed.

~~the magistrate may make such order as he thinks fit when in the trial of the offence committed, and when the magistrate decides the question (1),~~

Provided that in lieu of ordering confiscation he may give the owner of the thing liable to be confiscated an option to pay such fine as the magistrate thinks fit.

79. Further provisions for confiscation.—When there is reason to believe that an offence under this Act has been committed, but the offender is not known or cannot be found and when anything or animal liable to confiscation under this Act and not in the possession of any person cannot be satisfactorily accounted for, the case shall be enquired into and determined by the Collector, who may order confiscation :

Provided that no such order shall be made until the expiration of one month from the date of seizing the thing or animal in question or without hearing the person (if any) claiming any right thereto, and the evidence (if any) which he produces in support of the claim :

THE PUNJAB EXCISE ACT (I OF 1914.)

Provided, further, that if the thing in question is liable to speedy and natural decay, or if the Collector is of opinion that the sale of the thing or animal in question would be for the benefit of its owner, the Collector may at any time direct it to be sold ; and the provisions of this section shall, so far as may be, apply to the net proceeds of such sale.

80. Power of excise officers to compound offences.—(1) The Collector may accept from any person who is reasonably suspected of having committed an offence punishable under section 62, section 65 or section 68 of this Act, a sum of money by way of composition for such offence ; and on the payment of such sum of money to the Collector the accused person if in custody shall be discharged and no further proceedings shall be taken against him in respect of such offence.

(2) The cancellation or suspension of any license, permit or pass under section 36 (a), (b) or (c) of this Act may be foregone or revoked by and at the sole discretion of the authority having power to cancel or suspend it on payment by the holder of such license, permit or pass of such penalty as such authority may fix.

(3) Where any excisable article has been seized under the provisions of this Act, the Collector may, in his discretion, at any time before a magistrate has passed an order under section 78, sub-section (2), release it on receiving payment of the value thereof.

SCHEDULE.

(See section 2.)

ENACTMENTS REPEALED.

Year	No.	Short title.	Extent of repeal.

ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

1863	XVI	The Excise (Spirits) Act, 1863	The Whole.
1894	VIII	The Indian Tariff Act, 1894	Section 6.
1896	XII	The Excise Act, 1896	The Whole.
1906	VII	The Excise (Amendment) Act, 1906	The Whole.

Section 6 of the Indian Tariff Act had reference to Act XVI of 1863 only..

THE PUNJAB LOCAL OPTION ACT, 1923.

PUNJAB ACT, V OF 1923.

THE PUNJAB LOCAL OPTION ACT, 1923.

PUNJAB ACT, V OF 1923.

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PUNJAB ACT, V OF 1923.

An Act to provide for the restriction of the sale of intoxicating liquor according to the wishes of local bodies.

Preamble.—Whereas it is desirable to enable local bodies to restrict the sale of intoxicating liquor within certain areas ; and whereas the previous sanction of the Governor-General, under sub-section (3) of section 80-A of the Government of India Act, has been obtained ; it is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. *Short title, extent and commencement.*—(1) This Act may be called the Punjab Local Option Act, 1923.

(2) It extends to the Punjab.

* (3) It shall come into force on such date as the Local Government may by notification appoint in this behalf.

2. *Definitions.*—In this Act, unless there is anything repugnant in the subject or context—

(1) “Liquor” has the meaning assigned to it in the Punjab Excise Act, 1914.

(2) “Foreign liquor” means—

(a) all liquor imported by sea into British India other than rectified spirit, denatured spirit and perfumed spirit ; and

(b) all beer manufactured in India.

(3) “Local body” means a District Board established under the Punjab District Boards Act, 1883, or a Municipal Committee or Notified Area Committee established or appointed under the Punjab Municipal Act, 1911, or a Small Town Committee established under the Punjab Small Towns Act, 1921.

*It was applied to the Punjab with effect from 1st April 1924,—*vide P. G. N. 3605, dated 4th February 1924.*

PUNJAB EXCISE MANUAL.

(4) " Empowered Local Body " means a local body concerning which a declaration has been made under section 3 that it may exercise the powers therein specified.

(5) " Sale " includes any transfer other than by way of gift.

(6) " Licensed shop " means the business premises of a _____
not include any
namely—

- (i) a club;
- (ii) a hotel;
- (iii) a restaurant bar;
- (iv) a Railway refreshment room, except that kept for Hindus and Muhammadans; and
- (v) a Railway restaurant car.

(7) " Local area " means the area over which a local body has authority.

3. Application by local body for extension of the 1st.—The Local Government shall, on the application of a local body, within a period not exceeding three months from the date of such application, declare by notification that such local body may exercise the powers conferred under sections 4, 5 and 8.

CHAPTER II.

POWERS OF AN EMPOWERED LOCAL BODY.

of liquor shops in a local
ly may, from time to time,
with its rules of business
of licensed shops at
which liquor may be sold within its local area.

in case of a Muni-
ier case, than
the Collector
23 within the
limits of such local area.

(3) Such resolution shall take effect from the 1st day of April in the year next following the date on which it was passed.

THE LOCAL OPTION ACT (V OF 1923.)

5. *Referendum.*—(1) An empowered local body may, by resolution passed from time to time in accordance with its rules of business—

- (a) prescribe a maximum number, which may be less than the proportion prescribed in sub-section (2) of section 4 of licensed shops at which liquor may be sold within its local area ; or
- (b) direct that liquor may not be sold at any licensed shop within such local area :

Provided that no such resolution shall have effect under this Act until it has been submitted by way of referendum to the registered electors of such empowered local body, and has been confirmed by a two-thirds' majority of the total number of such electors.

(2) When a resolution has been confirmed under sub-section (1), it shall take effect from the 1st day of April of the year next following the date of such confirmation and shall thereafter remain in force :

Provided that at any time such empowered local body may, by further resolution, declare that such resolution shall cease to have effect upon the 1st day of April in the year next following the date of such further resolution, and such resolution shall accordingly cease to have effect from such date.

6. *Resolutions of empowered local bodies to be binding on Collectors.*—Notwithstanding anything contained in the Punjab Excise Act, 1914, and the rules made thereunder with regard to the powers and functions of the Collector under the said Act, a resolution passed under section 4 or passed and confirmed under section 5 shall be binding upon the Collector of the district in which the local area concerned is situated :

Provided that if the Collector is of opinion for reasons to be recorded in writing that within such local area illicit distillation or smuggling of alcohol has been carried on or connived at within the two years preceding the date of the passing of such resolution by any of the residents of such local area, such resolution shall not be binding upon him unless the Commissioner orders that it shall be so binding.

CHAPTER III.

POWER TO MAKE RULES.

7. *Powers of the Local Government.*—The Local Government may make rules regulating the procedure for holding a referendum under section 5.

PUNJAB EXCISE MANUAL.

8. Power of local bodies.—(1) An empowered local body may make rules prescribing—

- (a) the portions of its local area in which licensed shops may be situated;
- (b) the hours during which liquor may be sold at such shops; and
- (c) the minimum age, which shall not exceed 18 years, of the persons who may be served with liquor at such shops.

CHAPTER IV.

FOREIGN LIQUOR.

9. Special provision concerning foreign liquor.—Except as hereinafter provided, the provisions of this Act shall not apply to the sale of foreign liquor, but,

..... prescribed a maximum in 4 or section 5 or section 5, and the object of such pres. by the sale of foreign

liquor in the local area concerned, the Local Government shall, by rule made under section 58 of the Punjab Excise Act, 1914, prohibit the Collector from granting a license for the sale of foreign liquor in the said local area, except in accordance with the terms of such resolutions as such empowered local body may have passed or may pass in respect of country liquor, or with the special sanction of the Local Government.

CHAPTER V.

GENERAL.

10. Penalties.—Any person who commits a breach of any rule made under section 8 shall be punishable with a fine which may extend to one hundred rupees.

11. Sating of the provisions of the Punjab Excise Act, 1914.—Subject to the ~~.....~~ of the Punjab Excise Act under shall have full for empowered local bodies.

THE OPIUM ACT, 1878

(ACT I OF 1878).

As modified up to 1st April 1931.

STATEMENT OF REPEALS AND AMENDMENTS.

SECTION 2 REPEALED	..	.. Act 12 of 1891, Sch. I., and Act 4 of 1894, Sch., Part III.
SECTIONS 3, 4, 5, 9, 11, 14 AMENDED	..	.. Act 2 of 1930, s. 40 and Sch. II.
SECTION 5 AMENDED	..	.. Act 38 of 1920, s. 2 and Sch. I.
SECTION 6 OMITTED	..	.. Act 2 of 1930, s. 40 and Sch. II.
SECTION 8 AMENDED	..	.. Act 38 of 1920, s. 2 and Sch. I.
SECTION 9 AMENDED	..	.. PUNJAB ACT III OF 1925.
SECTION 18 AMENDED	..	.. Act 38 of 1920, s. 2 and Sch. I.
SECTION 22 OMITTED Act 2 of 1930, s. 40 and Sch. II.
SECTION 24 AMENDED Act 12 of 1891, Sch. II.

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Act No. I of 1878¹ as amended by the Opium (Punjab Amendment Act), 1925.

[9th January 1878.]

An Act to amend the law relating to Opium.

[As modified up to the 1st April, 1931.]

Preamble.—Whereas it is expedient to amend the law relating to opium; It is hereby enacted as follows:—

1. Short title.—This Act may be called the Opium Act, 1878.

Local extent.—It shall extend to such local areas² as the Governor-General in Council may, by notification in the *Gazette of India*, from time to time direct;

¹For the Statement of Objects and Reasons, see *Gazette of India*, 1877, Pt. V, p. 645; for Proceedings in Council, see *ibid*, Supplement, pp. 3015 and 3030; *ibid*, 1878 pp. 53 and 80.

The Act has been declared in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3, as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), B. & O. Code; in British Baluchistan, by the Baluchistan Laws Regulation, 1913 (2 of 1913), s. 3, Bal. Code; and in the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3, B. & O. Code.

It has been declared in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (13 of 1898), s. 4 (1), Sch. I, Bur. Code.

It has been declared in force in the Arakan Hill District by s. 2 of Reg. I of 1916, Bur. Code.

The Act is supplemented in Burma by the Burma Opium Law Amendment Act, 1909 (Bur. Act 7 of 1909), Bur. Code.

²It has been extended by notification in the *Gazette of India* to the following local areas from the date specified against each:—

- (1) Ajmer-Merwara, from 2nd August, 1879, see *Gazette of India*, 1879, Pt. I, p. 466; see also Aj. R. and O.;
- (2) Assam, from 1st April, 1879, see *ibid*, p. 259;
- (3) Bengal (which then included the present Provinces of Bihar and Orissa) from 21st August, 1878, see *Gazette of India*, 1878, Pt. I, p. 526;
- (4) Bombay Presidency, from 1st April, 1878, see *ibid*, p. 231;
- (5) Central Provinces, from 28th June, 1879, see *ibid* 1879, Pt. I, p. 441;
- (6) Coorg, from 1st April, 1882, see *ibid*, 1882, Pt. I, p. 135;
- (7) Lower Burma, from 29th March, 1879, see *ibid*, 1879, Pt. I, p. 75;
- (8) Madras Presidency, from 1st July, 1880, see *ibid*, 1880, Pt. I, p. 293;
- (9) the Punjab, from 1st April, 1880, see *ibid*, 1880, Pt. I, p. 16; and
- (10) United Provinces of Agra and Oudh, from 2nd February, 1878, see *ibid*, 1878, Pt. I, p. 68.

The Act has been extended under s. 10 (1) of the Burma Laws Act, 1898 (13 of 1898), to the Myelat, see *Burma Gazette*, 1927, Pt. I., p. 242, and the whole Act, with the exception of ss. 6-8 and 22-25, has been extended to the Taunggyi Civil Station in the Southern Shan States and the Lashio Civil Station in the Northern Shan States, respectively, with certain modifications, see *Burma Gazette*, 1900, Pt. I, pp. 478 and 799, respectively.

PUNJAB EXCISE MANUAL.

Commencement.—And it shall come into force in each of such areas on such day as the Governor-General in Council in like manner directs in this behalf.

2. [Repeal and amendment of enactments.] Rep. by the Repealing and Amending Act, 1891 (XII of 1891), and the Repealing and Amending Act, 1894 (IV of 1894).

3. Interpretation clause.—In this Act, unless there be something repugnant in the subject or context,—

i["opium" means—

(i) the capsules of the poppy (*Papaver Somniferum L.*);

(ii) the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and transport; and

(iii) any mixture, with or without neutral materials, of any of the above forms of opium,

but does not include any preparation containing not more than 0·2 per cent. of morphine, or a manufactured drug as defined in section 2 of the Dangerous Drugs Act, 1930 ;]

2 of 1930

"provinciality" ——

dency :
or (wh
try cases under this Act) a Magistrate of the second class ;

ii["import" means to import inter-provincially, as defined in clause (j) of section 2 of the Dangerous Drugs Act, 1930 ;]

2 of 1930

"export" means to export inter-provincially, as defined in clause (l) of section 2 of the Dangerous Drugs Act, 1930 ; and]

"transport" means to remove from one place to another within the territories administered by the same Local Government.

¹This definition was substituted by s. 40 and Sch. II of the Dangerous Drugs Act, 1930 (2 of 1930).

²For notification empowering Magistrate of the 2nd class in Madras to try cases under the Act, see Madras Legal Rules and Orders, edition 1923.

³These definitions were substituted by s. 40 and Sch. II of the Dangerous Drugs Act, 1930 (2 of 1930).

THE OPIUM ACT (I OF 1878.)

4. Prohibition of poppy cultivation and possession, etc., of opium.—Except as permitted by this Act, or by any other enactment relating to opium for the time being in force, or by rules framed under this Act or under any such enactment, no one shall—

* * * * *

- 2[(a)] possess opium ;
- 2[(b)] transport opium ;
- 2[(c)] import or export opium ; or
- 2[(d)] sell opium.

5. Power to make rules to permit such matters.—The Local Government, ³[subject to the control] of the Governor-General in Council, may, from time to time, by notification in the local Gazette, make rules⁴ consistent with this Act, to permit absolutely, or subject to the payment of duty or to any other conditions, and to regulate, within the whole or any specified part of the territories administered by such Government, all or any of the following matters :—

* * * * *

- 4[(a)] the possession of opium ;
- 4[(b)] the transport of opium ;
- 4[(c)] the importation or exportation of opium ; and
- 4[(d)] the sale of opium, and the farm of duties leviable on the sale of opium by retail :

Provided that no duty shall be levied under any such rule on any opium imported and on which a duty is imposed by or under the law⁵ relating to sea customs for the time being in force or under [the Dangerous Drugs Act, 1930].⁶

6. [Duty on opium imported by land.] Rep. by the Dangerous Drugs Act, 1930 (2 of 1930).

¹Original clauses (a) and (b) were omitted by s. 40 and Sch. II of the Dangerous Drugs Act, 1930 (2 of 1930).

²Original clauses (c), (d), (e), (f) were re-lettered, *ibid.*

³These words were substituted for the words "with the previous sanction" by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

⁴For rules made under this section see different local Rules and Orders.

⁵Original clauses (a) and (b) were omitted by s. 40 and Sch. II of the Dangerous Drugs Act, 1930 (2 of 1930).

⁶Original clauses (c), (d), (e), (f) were re-lettered, *ibid.*

⁷See the Sea Customs Act, 1878 (8 of 1878) (Chapter VIII).

⁸These words and figures were substituted for the word and figure "section 6" by s. 40 and Sch. II of the Dangerous Drugs Act, 1930 (2 of 1930).

PUNJAB EXCISE MANUAL.

7. Warehousing opium.—The Governor-General in Council may, by order notified in the Gazette of India,—

- (a) authorize any Local Government to establish warehouses for opium legally imported into, or intended to be exported from, the territories administered by such Local Government, and
- (b) cancel any such order.

So long as such order remains in force, the Local Government may, by notification published in the official Gazette,—

- (c) declare any place to be a warehouse for all or any opium legally imported, whether before or after the payment of any duty leviable thereon, into the territory referred to;
- (d) cancel any such declaration.

An order under clause (b) shall cancel all previous declarations under clause (c) of this section relating to places in the territories to which such order refers.

So long as such declaration remains in force, the owner of all such opium shall be bound to deposit it in such warehouse.

8. Power to make rules relating to warehouses.—The Local Government, [subject to the control] of the Governor-General in Council, may from time to time, by notification in the local Gazette, make rules³ consistent with this Act to regulate the safe custody of opium warehoused under section 7; the levy of fees for such warehousing; the removal of such opium for sale or exportation; and the manner in which it shall be disposed of, if any duty or fees leviable on it be not paid within twelve months from the date of warehousing the same.

9. Penalty for illegal cultivation of poppy, etc.—Any person who, in contravention of this Act, or of rules made and notified under section 5 or section 8,

* * *

¹ For a notification authorizing the Government of Bombay to establish a warehouse under this section, see Item, Local R. and O.

² These words were substituted for the words "with the previous sanction" by A. 7 and Sch. I of the Dangerous Act, 1920 (23 of 1920).

³ For rules issued under this section in Bombay, see Bombay Opium Manual.

⁴ For the amendment of s. 7 in its application to the Punjab, see Pun. Act 3 of 1925.

⁵ Original clauses (e) and (f) were omitted by s. 40 and Sch. II of the Dangerous Drugs Act, 1930 (7 of 1930).

THE OPIUM ACT (1 OF 1878.)

- ¹[(a)] possesses opium; or
- ¹[(b)] transports opium, or
- ¹[(c)] imports or exports opium, or
- ¹[(d)] sells opium, or
- ¹[(e)] omits to warehouse opium, or removes or does any act in respect of warehoused opium ,

and any person who otherwise contravenes any such rule, shall, on conviction before a Magistrate, be punished for each such offence with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both ;

10. Presumption in prosecutions under section 9.—In prosecutions under section 9, it shall be presumed, until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act.

11. Confiscation of opium.—In any case in which an offence under section 9 has been committed,—

2* * * * *

- ³[(a)] the opium in respect of which any offence under the same section has been committed,
- ³[(b)] where, in the case of an offence under clause ⁴[(b) or (c)] of the same section, the offender is transporting, importing or exporting any opium exceeding the quantity (if any) which he is permitted to transport, import or export, as the case may be, the whole of the opium which he is transporting, importing or exporting,
- ³[(c)] where, in the case of an offence under clause ⁵[(d)] of the same section, the offender has in his possession any opium other than the opium

¹Original clauses (c), (d), (e), (f); (g) were re-lettered by s. 40 and Sch. II of the Dangerous Drugs Act, 1930 (2 of 1930).

²Original clause (a) was omitted, *ibid.*

³Original clauses (b), (c), (d) were re-lettered, *ibid.*

⁴This was substituted for "(d) or (e)", *ibid.*

⁵This was substituted for "(f)", *ibid.*

PUNJAB EXCISE MANUAL.

in respect of which the offence has been committed, the whole of such other opium, shall be liable to confiscation.

may be concealed, and the animals and conveyances used in carrying it, shall likewise be liable to confiscation.

12. Order of confiscation by whom to be made.—When the offender is convicted, or when the person charged with an offence in respect of any opium is acquitted, but the Magistrate decides that the opium is liable to confiscation, such confiscation may be ordered by the Magistrate.

Whenever confiscation is authorized by this Act, the officer ordering it may give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation, such fine as the officer thinks fit.

When an offence against this Act has been committed, but the offender is not known or cannot be found, or when opium not in the possession of any person cannot be satisfactorily accounted for, the case shall be enquired into and determined by the Collector of the district or Deputy Commissioner, or by any other officer authorized by the Local Government in this behalf, either personally or in right of his office, who may order such confiscation : Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing the persons (if any) claiming any right thereto, and the evidence (if any) which they produce in support of their claims.

13. Power to make rules regarding disposal of things confiscated, and rewards.—The Local Government may,¹ *

* * * from time to time, by notification in the local Gazette, make rules² consistent with this Act to regulate—

- (a) the disposal of all things confiscated under this Act ; and
- (b) the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act.

¹The words "with the previous sanction of the Governor-General in Council" were omitted by s. 2 and Sch. 1 of the Devolution Act, 1920 (39 of 1920).

²See List of rules noted under s. 5, supra, which were made also under the powers conferred by this section.

THE OPIUM ACT (I OF 1878.)

14. *Power to enter, arrest and seize, on information that opium is unlawfully kept in any enclosed place.*—Any officer of any of the departments of Excise, Police, Customs, Salt, Opium or Revenue superior in rank to a peon or constable, who may in right of his office be authorized by the ¹Local Government in this behalf, and who has reason to believe, from personal knowledge or from information given by any person and taken down in writing, that opium liable to confiscation under this Act is ^{2*} kept or concealed in any building, vessel or enclosed place, may, between sunrise and sunset,—

- (a) enter into any such building, vessel, or place ;
- (b) in case of resistance, break open any door and remove any other obstacle to such entry ;
- (c) seize such opium ^{3*} * * * and any other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium ; and
- (d) detain and search, and if he thinks proper, arrest, any person whom he has reason to believe to be guilty of any offence relating to such opium under this or any other law for the time being in force.

15. Any officer of any of the said departments may—

- (a) *Power to seize opium in open places*—seize in any open place or in transit, any opium or other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium ;
- (b) *Power to detain, search and arrest*—detain and search any person whom he has reason to believe to be guilty of any offence against this or any other such law, and, if such person has opium in his possession, arrest him and any other persons in his company.

16. Searches how made.—All searches under section 14

¹For notification conferring powers on officials of the class referred to, see different local Rules and Orders.

²The word "manufactured" was omitted by s. 40 and Sch.II of the Dangerous Drugs Act, 1930 (2 of 1930).

³The words "and all materials used in the manufacture thereof" were omitted ibid.

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or section 15 shall be made in accordance with the provisions of the ¹Code of Criminal Procedure.

17. Officers to assist each other.—The officers of the several departments mentioned in section 14 shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

18. *Verbal entries searches, seizures and arrests.*—Any officer of any of the said departments who, without reasonable ground of suspicion, enters or searches, or causes to be entered or searched, any building, vessel or place

or verbally and unnecessarily seizes the property of any person on the pretence of seizing or searching for any opium or other thing liable to confiscation under this Act.

or verbally and unnecessarily detains, searches or arrests any person

shall, for every such offence, be punished with fine not exceeding five hundred rupees.

19. Issue of warrants.—The Collector of the district, Deputy Commissioner or other² officer authorized by the Local Government in this behalf, either personally or in right of his office, or a Magistrate, may issue his warrant for the arrest of any person whom he has reason to believe to have committed an offence relating to opium, or for the search, whether by day or night, of any building or vessel or place in which he has reason to believe opium liable to confiscation to be kept or concealed.

All warrants issued under this section shall be executed in accordance with the provisions of the ³Code of Criminal Procedure.

20. Disposal of person arrested or thing seized.—Every person arrested, and thing seized, under section 14 or section 15, shall be forwarded without delay to the officer in charge of the nearest police station; and every person arrested and thing seized under section 19 shall be forwarded without delay to the officer by whom the warrant was issued.

¹See now the Code of Criminal Procedure.

THE OPIUM ACT (1 OF 1878.)

Every officer to whom any person or thing is forwarded under this section shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or thing.

21. Report of arrests and seizures.—Whenever any officer makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

22. [Procedure in case of illegal poppy cultivation.]
Rep. by the Dangerous Drugs Act, 1930 (2 of 1930).

23. Recovery of arrears of fees, duties, etc.—Any arrear of any fee or duty imposed under this Act or any rule made hereunder,

and any arrear due from any farmer of opium-revenue, may be recovered from the person primarily liable to pay the same to the Government or from his surety (if any) as if it were an arrear of land-revenue.

24. Farmer may apply to Collector or other officer to recover amount due to him by licensee.—When any amount is due to a farmer of opium-revenue from his licensee, in respect of a license, such farmer may make an application to the Collector of the district, Deputy Commissioner or other¹ officer authorized by the Local Government in this behalf, praying such officer to recover such amount on behalf of the applicant; and on receiving such application, such Collector, Deputy Commissioner or other officer may in his discretion recover such amount as if it were an arrear of land-revenue, and shall pay any amount so recovered to the application :

Provided that the execution of any process issued by such Collector,² [Deputy Commissioner] or other officer for the recovery of such amount shall be stayed if the licensee institutes a suit in the Civil Court to try the demand of the farmer, and furnishes security to the satisfaction of such officer for the payment of the amount which such Court may adjudge to be due from him to such farmer :

¹See foot-note to s. 14 supra.

²The words "Deputy Commissioner" were substituted for the words "Deputy Collector" by the Repealing and Amending Act, 1891 (12 of 1891), Sch. II.

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Provided also that nothing contained in this section or done thereunder shall affect the right of any farmer or opium-revenue to recover by suit in the Civil Court or otherwise any amount due to him from such licensee.

25. Recovery of penalties due under bond. - When any person, in compliance with any rule made hereunder, gives a bond for the performance of any duty or act, such duty or act shall be deemed to be a public duty, or an act in which the public are interested, as the case may be, within the meaning of the Indian Contract Act, 1872, section 71; and, upon breach of the conditions of such bond by him the whole sum named therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land-revenue.

SCHEDULE.

{
EXACTMENTS IMPOSED }
Repealed by Act XII of 1891.

THE PUNJAB OPIUM-SMOKING ACT, 1923.
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The Punjab Opium-Smoking Act, 1923.

PUNJAB ACT, VI OF 1923.

An Act to provide for the control of the practice of opium-smoking in the towns of the Punjab.

WHEREAS it is desirable to control the practice of opium-smoking and to prevent the assembling of persons for the purpose of opium-smoking ; and whereas the previous sanction of the Governor-General under sub-section (3) of section 80-A of the Government of India Act has been obtained, it is hereby enacted as follows :—

1. (1) *Short title, extent and commencement.*—This Act may be called the Punjab Opium-Smoking Act, 1923.

(2) It extends to all municipalities and cantonments in the Punjab.

*(3) It shall come into force on such date as the Local Government may by notification appoint in this behalf.

2. *Definitions.*—In this Act unless there is anything repugnant in the subject or context—

(a) “Opium” means chandu, madak, and every other preparation or admixture of opium which may be used for smoking ;

(b) “Place” includes a building, house, shop, booth, *chhaphar*, tent, vessel, raft and vehicle and any part thereof.

3. *Opium-smoking Assembly.*—An assembly of three or more persons is designated an opium-smoking assembly if the common object of the persons composing that assembly is to smoke opium or to prepare opium for smoking purposes.

Explanation.—An assembly which was not an opium-smoking assembly when it assembled may subsequently become such an assembly.

4. *Member of opium-smoking assembly.*—Whoever, being aware of facts which render an assembly an opium-smoking assembly, intentionally joins that assembly or continues therein is said to be a member of that assembly.

5. *Presumption raised by presence of opium or opium-smoking appliances.*—The presence of any opium and of any

*The Act has been applied to the Punjab with effect from 1st April 1924,—vide P. G. N. 7284, dated 10th March 1924.

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pipes for the smoking of opium or of any apparatus used in the preparation of opium in any place where three or more persons are assembled shall be held sufficient to raise a presumption that each member of such assembly is present at such place for the purpose of smoking opium or of preparing opium for smoking purposes.

6.

Whoever
be punished
to six months, or with fine which may extend to one thousand rupees or with both.

7. Penalty for opening, keeping or having charge of place used for such assembly.—Whoever opens, keeps or uses any place, or permits any place to be opened, kept or used, for the purposes of an opium-smoking assembly, or has the care or management of, or in any way assists in conducting the business of, any place used or kept for the purposes aforesaid shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

8. Penalty when owner fails to give notice of use of place for such assembly.—Whoever, being the owner of any place, and knowing or having reason to believe that such place, whether in his actual occupation or otherwise, is being or is about to be, used for the purposes of an opium-smoking assembly, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees.

9. Enhancement of punishment on second conviction.—Whoever, having been previously convicted of an offence under sections 6, 7 or 8 is again convicted of an offence under this Act, shall be liable to an enhanced punishment which might be imposed.

10. Search warrants and powers to search.—If a District Magistrate or Sub-Divisional Magistrate upon information received and after such inquiry (if any) as he considers necessary, has reason to believe that any place is being, or is likely to be, used for the purposes of an opium-smoking assembly, he may issue a warrant to an officer of the Excise

THE PUNJAB OPIUM-SMOKING ACT (VI OF 1923).

Department, not below the rank of an inspector, authorising him—

- (a) to enter such place by day or night with any persons whose assistance such officer may consider necessary;
- (b) to search all parts of such place in which such officer has reason to believe that any opium or any appliance for the preparation of opium or for opium-smoking is concealed and all or any persons whom he may find in such place;
- (c) to arrest all persons whom such officer may find in such place, whether they are actually engaged in smoking opium or not;
- (d) to seize all opium and appliances for opium-smoking or for the manufacture of opium which may be found in such place.

11. Application of the Code of Criminal Procedure, 1898, to warrants and searches.—The provisions of the Code of Criminal Procedure, 1898, shall apply to the execution of warrants and to searches made under the foregoing section.

12. Report to be made in case of arrest or seizure.—Whenever any officer makes any arrest or seizure under this Act, he shall without delay and in any case within forty-eight hours forward every person arrested and everything seized with a full report of all particulars of the arrest or seizure to the Magistrate by whom the warrant was issued.

13. Bail and security.—When any person arrested under this Act is prepared to furnish bail he shall be released on bail or, at the discretion of the officer making the arrest, on his own bond.

14. Aid to excise officers.—Every officer of the Police and Land Revenue Departments shall be bound to give reasonable aid to any excise officer in carrying out the provisions of this Act upon notice given and request made.

15. Confiscation and destruction of opium and things seized.—On the conviction of any person for an offence under this Act the Court may order that any opium or any instrument or appliance in respect of, or by means of, which

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such offence has been committed, or any receptacle, package or covering in which such opium, instrument or appliance was found, and any other contents of such receptacle, package or covering, shall be confiscated or destroyed.

16. *Offences against the State.* Magistrates only.—
the first class shall

17. *Bar of certain suits.*—No suit shall lie in any Civil Court against the Secretary of State for India in Council or any excise officer for damages for any act in good faith done or ordered to be done in pursuance of this Act.

18. (1) *Power to make rules.*—The Local Government may make rules to carry out the objects of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may—

- (a) regulate the disposal of things confiscated under this Act,
- (b) prescribe and regulate the payment of rewards out of fines imposed under this Act.

THE DANGEROUS DRUGS ACT, 1930.
(II OF 1930).

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Act No. II of 1930.

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor-General on the 1st March, 1930.)

An Act to centralise and vest in the Governor-General in Council the control over certain operations relating to dangerous drugs and to increase and render uniform throughout British India the penalties for offences relating to such operations.

WHEREAS India participated in the Second International Opium Conference, which was convoked in accordance with the resolution of the Assembly of the League of Nations, dated the 27th day of September, 1923, met at Geneva on the 17th day of November, 1924, and on the 19th day of February, 1925, adopted the Convention relating to Dangerous Drugs (hereinafter referred to as the Geneva Convention) ;

And whereas India was a State signatory to the said Geneva Convention ;

And whereas the Contracting Parties to the said Geneva Convention resolved to take further measures to suppress the contraband traffic in and abuse of Dangerous Drugs, especially those derived from opium, Indian hemp and coca leaf, such measures being more particularly set forth in the Articles of the said Geneva Convention ;

And whereas for the effective carrying out of the said measures it is expedient that the control of certain operations relating to Dangerous Drugs should be centralised and vested in the Governor-General in Council ;

And whereas it is also expedient that the penalties for certain offences relating to Dangerous Drugs should be increased, and that all penalties relating to certain operations should be rendered uniform throughout British India ;

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. *Short title, extent and commencement.*—(1) This Act may be called the Dangerous Drugs Act, 1930.

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(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(3) It shall come into force on such date as the Governor-General in Council may, by notification in the *Gazette of India*, appoint.

Note.—The Act came into force on 1st February 1931, vide Government of India Notification No. 1, dated 10th January 1931.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(a) "coca leaf" means—

(i) the leaf and young twigs of any coca plant, that is, of the *Erythroxylon coca* (Lamk.) and the *Erythroxylon noot-granatense* (Hiern.) and their varieties, and of any other species of this genus which the Governor-General in Council may, by notification in the *Gazette of India*, declare to be coca plants for the purposes of this Act; and

(ii) any mixture thereof, with or without neutral materials; but does not include any preparation containing not more than 0·1 per cent. of cocaine;

(b) "coca derivative" means—

(i) crude cocaine, that is, any extract of coca leaf which can be used, directly or indirectly, for the manufacture of cocaine;

(ii) ecgonine, that is, levo-ecgonine having the chemical formula $C_{18}H_{21}NO_3 \cdot H_2O$, and all the derivatives of levo-ecgonine from which it can be obtained;

(iii) cocaine, that is, methyl-levo-ecgonine having the chemical formula $C_{18}H_{21}NO_3$, and its salts; and

(iv) all preparations, official and non-official, containing more than 0·1 per cent. of cocaine;

(c) "hemp" means—

(i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (*Cannabis sativa L.*), including all forms known as *bhang*, *siddhi* or *ganya*;

(ii) charas, that is, the resin obtained from the Indian hemp plant, which has not been submitted to any manipulations other than

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those necessary for packing and transport ; and

(iii) any mixture, with or without neutral materials, of any of the above forms of hemp or any drink prepared therefrom ;

(d) " medicinal hemp " means any extract or tincture of hemp ;

(e) " opium " means—

(i) the capsules of the poppy (*Papaver somniferum L.*) ;

(ii) the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and transport ; and

(iii) any mixture, with or without neutral materials, of any of the above forms of opium ;

but does not include any preparation containing not more than 0·2 per cent. of morphine ;

(f) " opium derivative " means—

(i) medicinal opium, that is, opium which has undergone the processes necessary to adapt it for medicinal use in accordance with the requirements of the British Pharmacopœia, whether in powder form or granulated or otherwise or mixed with neutral materials ;

(ii) prepared opium, that is, any product of opium obtained by any series of operations designed to transform opium into an extract suitable for smoking, and the dross or other residue remaining after opium is smoked ;

(iii) morphine, that is, the principal alkaloid of opium having the chemical formula $C_{17}H_{21}NO_3$, and its salts ;

(iv) diacetyl morphine, that is, the alkaloid, also known as diamorphine or heroin, having the chemical formula $C_{21}H_{23}NO_5$ and its salts ; and

(v) all preparations, official and non-official, containing more than 0·2 per cent. of morphine, or containing any diacetyl morphine ;

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- (g) "manufactured drug" includes—
 (i) all coca derivatives, medicinal hemp and opium
 and

CORRECTION SLIP NO. 1, DATED LAHORE, THE 23RD JANUARY 1934.

The Dangerous Drugs Act, 1930 (II of 1930). Page 4.

In sub-clause (ii) of clause (g) of section 2 of the Dangerous Drugs Act, 1930, after the words "Geneva Convention" the words "or in pursuance of any international Convention supplementing the Geneva Convention" shall be inserted.

[Section 2 of the Dangerous Drugs (Amendment) Act 26 of 1933.]

tion in the Gazette of India made in pursuance of a finding under Article 8 of the Geneva Convention, declare not to be a manufactured drug;

- (h) "dangerous drug" includes coca leaf, hemp and opium, and all manufactured drugs;
- (i) "to import into British India" means, subject to the provisions of clause (j), to bring into British India by land, sea or air;
- (j) "to import inter-provincially" means to bring into one province from another, and includes—
 (i) the bringing of a dangerous drug into a province from any territory of a Prince or Chief in India which is adjacent to or enclosed by the territories of such province, which the Governor-General in Council may, by notification in the Gazette of India, declare to be inter-provincial import; and
 (ii) bringing into one province from another, in the course of a continuous journey, by sea or through the territory of a Prince or Chief in India;
- (k) "to export from British India" means, subject to the provisions of clause (l), to take out of British India by land, sea or air;
- (l) "to export inter-provincially" means to take out of one province into another, and includes—
 (i) the taking of a dangerous drug out of a province into any territory of a Prince or Chief in India which is adjacent to or enclosed by the territories of such province,

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- which the Governor-General in Council may, by notification in the *Gazette of India*, declare to be inter-provincial export ; and
- (ii) taking out of one province into another, in the course of a continuous journey, by sea or through the territories of a Prince or Chief in India ;
- (m) "to transport" means to take from one place to another in the same province ; and
- (n) "territory of a Prince or Chief in India" includes any territory in which the Governor-General in Council exercises powers or jurisdiction by virtue of the Indian (Foreign Jurisdiction) Order in Council, 1902.

3. Calculation of percentages in liquid preparations.—The Governor-General in Council may make rules prescribing the method by which percentages in the case of liquid preparations shall be calculated for the purposes of clauses (a), (b), (e) and (f) of section 2 :

Provided that, unless and until such rules are made such percentages shall be calculated on the basis that a preparation containing one per cent. of a substance means a preparation in which one gramme of the substance, if a solid, or one millilitre of the substance, if a liquid, is contained in every one hundred millilitres of the preparation, and so in proportion for any greater or less amount.

CORRECTION SLIP NO: 2, DATED LAHORE, THE 23RD JANUARY 1930

The Dangerous Drugs Act, 1930 (II of 1930). Page 5.

Section 4 of the said Act shall be numbered as sub-section of section 4 and the following sub-section shall be added, namely—

"(2) The local Government may make rules restricting portion regulating the manufacture and possession of prepared opium which is lawfully possessed under clause (b) of section 1, unless (1)." possessed

[Section 3 of the Dangerous Drugs (Amendment) Act 26 of 1890, or]

(c) import into British India, export from British India, tranship or sell prepared opium :

Provided that this section shall not apply to the cultivation of any coca plant or to the gathering of any portion thereof on behalf of Government.

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5. Control of Governor-General in Council over production and supply of opium.—(1) No one shall—

- (a) cultivate the poppy (*Papaver somniferum L.*), or
- (b) manufacture opium,

save in accordance with rules made under sub-section (2) and with the conditions of any licence for that purpose which he may be required to obtain under those rules.

(2) The Governor-General in Council may make rules permitting and regulating the cultivation of the poppy (*Papaver somniferum L.*) and the manufacture of opium, and such rules may prescribe the form and conditions of licences for such cultivation and manufacture, the authorities by which such licences may be granted, the fees that may be charged therefor, and any other matter requisite to render effective the control of the Governor-General in Council

ing chemists.

6. Control of Governor-General in Council over manufacture of manufactured drugs.—(1) No one shall manufacture any manufactured drug, other than prepared opium, save in accordance with rules made under sub-section (2) and with the conditions of any licence for that purpose which he may be required to obtain under those rules.

(2) The Governor-General in Council may make rules permitting and regulating the manufacture of manufactured drugs, other than prepared opium, and such rules may prescribe the form and conditions of licences for such manufacture, the authorities by which such licences may be granted and the fees that may be charged therefor, and any other

- (b) export from British India, or
- (c) tranship.

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any dangerous drug, other than prepared opium, save in accordance with rules made under sub-section (2) and with the conditions of any licence for that purpose which he may be required to obtain under those rules.

(2) The Governor-General in Council may make rules permitting and regulating the import into and export from British India and the transhipment of dangerous drugs, other than prepared opium, and such rules may prescribe the ports or places at which any kind of dangerous drug may be imported, exported or transhipped, the form and conditions of licences for such import, export or transhipment, the authorities by which such licences may be granted, the fees that may be charged therefor, and any other matter requisite to render effective the control of the Governor-General in Council over such import, export and transhipment.

8. *Control of Local Government over internal traffic in manufactured drugs and coca leaf.*—(1) No one shall—

(a) import or export inter-provincially, transport, possess or sell any manufactured drug, other than prepared opium, or coca leaf, or

(b) manufacture medicinal opium or any preparation containing morphine, diacetyl morphine or cocaine,

save in accordance with rules made under sub-section (2) and with the conditions of any licence for that purpose which he may be required to obtain under those rules.

(2) The Local Government may, subject to the control of the Governor-General in Council, make rules permitting and regulating—

(a) the inter-provincial import and export into and from the territories under its administration, the transport, possession and sale of manufactured drugs, other than prepared opium, and of coca leaf; and

(b) the manufacture of medicinal opium or of any preparation containing morphine, diacetyl morphine or cocaine from materials which the maker is lawfully entitled to possess.

Such rules may prescribe the form and conditions of licences for such import, export, transport, possession, sale and manufacture, the authorities by which such licences may be

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granted and the fees that may be charged therefor, and any other matters requisite to render effective the control of the Local Government over such import, export, transport, possession, sale and manufacture.

(3) Save in so far as may be expressly provided in rules made under sub-section (2), nothing in this section shall apply to manufactured drugs which are the property and in the possession of Government :

Provided that such drugs shall not be sold or otherwise delivered to any person who, under the rules made by the Local Government under this section, is not entitled to their possession.

9. Control of Local Government over external dealings in dangerous drugs.—No one shall engage in or control any trade whereby a dangerous drug is obtained outside British India and supplied to any person outside British India, save in accordance with the conditions of a licence granted by and at the discretion of the Local Government.

CHAPTER III.

OFFENCES AND PENALTIES.

10. Punishment for contravention of section 4.—Whoever—

- (a) cultivates any coca plant or gathers any portion of a coca plant,
- (b) -----
- (c)

shall be punished with imprisonment which may extend to two years, or with fine, or with both:

Provided that this section shall not apply to the cultivation of any coca plant or to the gathering of any portion thereof on behalf of Government.

11. Punishment for contravention of section 5.—Whoever, in contravention of section 5, or any rule made under that section, or of any condition of a licence granted thereunder,

- (a) cultivates the poppy, or
 - (b) manufactures opium,
- shall be punished with imprisonment which may extend to two years, or with fine, or with both.

THE DANGEROUS DRUGS ACT (II OF 1930).

12. Punishment for contravention of section 6.—Whoever, in contravention of section 6, or any rule made under that section, or any condition of a licence granted thereunder, manufactures any manufactured drug, shall be punished with imprisonment which may extend to two years, or with fine, or with both.

13. Punishment for contravention of section 7.—Whoever, in contravention of section 7, or any rule made under that section, or any condition of a licence granted thereunder,

- (a) imports into British India,
- (b) exports from British India, or
- (c) transships.

any dangerous drug, shall be punished with imprisonment which may extend to two years, or with fine, or with both.

14. Punishment for contravention of section 8.—Whoever, in contravention of section 8, or any rule made under that section, or any condition of a licence issued thereunder,

- (a) imports or exports inter-provincially, transports, possesses or sells any manufactured drug or coca leaf, or
- (b) manufactures medicinal opium or any preparations containing morphine, diacetyl-morphine or cocaine,

shall be punished with imprisonment which may extend to two years, or with fine, or with both.

15. Punishment for allowing premises to be used for the commission of an offence.—Whoever, being the owner or occupier or having the use of any house, room, enclosure, space, vessel, vehicle, or place, knowingly permits it to be used for the commission by any other person of an offence punishable under section 10, section 12, section 13, or section 14, shall be punished with imprisonment which may extend to two years, or with fine, or with both.

16. Enhanced punishment for certain offences after previous conviction.—Whoever, having been convicted of an offence punishable under section 10, section 12, section 13, or section 14, is guilty of any offence punishable under any of those sections, shall be subject for every such subsequent offence to imprisonment which may extend to four years, or to fine, or to both.

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17. Enhanced punishment for offence under section 15 after previous conviction.—Whoever, having been convicted of an offence punishable under section 15, is again guilty of an offence punishable under that section, shall be subject for every such subsequent offence to imprisonment which may extend to four years, or to fine, or to both.

18. Security for abstaining from commission of certain offences.—(1) Whenever any person is convicted of an offence punishable under section 10, section 12, section 13, or section 14, and the Court convicting him is of opinion that it is necessary to require such person to execute a bond for abstaining from the commission of offences punishable under those sections, the Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without securities, for abstaining from the commission of such offences during such period, not exceeding three years, as it thinks fit to fix.

(2) The bond shall be in the form contained in Schedule I, ^{Explanatory notes, 1898,} in relation to all matters ^{relating to} the peace ^{and good order of the} Code.

(3) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(4) An order under this section may also be made by an appellate Court, or by the High Court when exercising its powers of revision.

19. Penalty for contravention of section 9.—Whoever ^{intends to supply a dangerous drug to any person} contravenes ^{in accordance with} section 9, shall be liable to a fine not exceeding one thousand rupees.

20. Attempt.—Whoever attempts to commit an offence punishable under this Chapter, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall be punished with the punishment provided for the offence.

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21. Abetments.—(1) Whoever abets an offence punishable under this Chapter shall, whether such offence be or be not committed in consequence of such abetment, and notwithstanding anything contained in section 116 of the Indian Penal Code, be punished with the punishment provided for **XLV of I** the offence.

(2) A person abets an offence within the meaning of this section who, in British India, abets the commission of any act in a place without and beyond British India which—

- (a) would constitute an offence if committed within British India ; or
- (b) under the laws of such place, is an offence relating to dangerous drugs having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within British India.

CHAPTER IV.

PROCEDURE.

22. Power to issue warrants.—(1) The Collector, or other officer authorised by the Local Government in this behalf, or a Presidency Magistrate or a Magistrate of the first class, or a Magistrate of the second class specially empowered by the Local Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed an offence punishable under Chapter III; or for the search, whether by day or by night, of any building, vessel or place in which he has reason to believe any dangerous drug in respect of which an offence punishable under Chapter III has been committed is kept or concealed.

(2) The officer to whom a search warrant under sub-section (1) is addressed shall have all the powers of an officer acting under section 23.

23. Power of entry, search, seizure and arrest without warrant.—(1) Any officer of the department of Excise, Police, Customs, Salt, Opium, or Revenue, superior in rank to a peon or constable, authorised in this behalf by the Local Government, who has reason to believe, from personal

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is kept or concealed in any building, vessel or enclosed place, may, between sunrise and sunset,—

- (a) enter into any such building, vessel or place;
- (b) in case of resistance, break open any door and remove any other obstacle to such entry;
- (c) seize such drug and all materials used in the manufacture thereof and any other article which he has reason to believe to be liable to confiscation under section 33 and any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under Chapter III relating to such drug; and
- (d) detain and search, and, if he think proper, arrest any person whom he has reason to believe to have committed an offence punishable under Chapter III relating to such drug:

Provided that if such officer has reason to believe that a search warrant cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, vessel or enclosed place at any time between sunset and sunrise, after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1), or records grounds for his belief under the proviso thereto, he shall forthwith send a copy thereof to his immediate official superior.

24. Power of seizure and arrest in public places.—Any officer of any of the departments mentioned in section 23 may—

- (a) seize, in any public place or in transit, any dangerous drug in respect of which he has reason to believe, an offence punishable under Chapter III has been committed, and, along with such drug, any other article liable to confiscation under section 33, and any document or other article which he has reason to believe may

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furnish evidence of the commission of an offence punishable under Chapter III relating to such drug;

- (b) detain and search any person whom he has reason to believe to have committed an offence punishable under Chapter III, and, if such person has any dangerous drug in his possession and such possession appears to him to be unlawful, arrest him and any other persons in his company.

25. Mode of making searches and arrests.—The provisions of the Code of Criminal Procedure, 1898, shall apply, in so far as they are not inconsistent with the provisions of sections 22, 23 and 24, to all warrants issued and arrests and searches made under those sections.

26. Obligations on officers to assist each other.—All officers of the several departments mentioned in section 23 shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

27. Report of arrests and seizures.—Whenever any person makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

28. Punishment for vexatious entry, search, seizure or arrest.—Any person empowered under section 23 or section 24 who—

- (a) without reasonable grounds of suspicion, enters or searches, or causes to be entered or searched, any building, vessel or place;
 - (b) vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any dangerous drug or other article liable to be confiscated under section 33, or of seizing any document or other article liable to seizure under section 23 or section 24; or
 - (c) vexatiously and unnecessarily detains, searches or arrests any person,
- shall be punished with fine which may extend to five hundred rupees.

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29. Disposal of person arrested and of articles seized.—

(1) Every person arrested and article seized under a warrant issued under section 22 shall be forwarded without delay to the authority by whom the warrant was issued; and every person arrested and article seized under section 23 or section 21 shall be forwarded without delay to the officer in charge of the nearest police station or to the nearest officer of the Excise Department empowered under section 30.

(2) The authority or officer to whom any person or article is forwarded under this section shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or article.

30. Power to invest Excise officers with powers of an officer in charge of a police station — The Local Government may invest any officer of the Excise Department or any class of such officers, with the powers of an officer in charge of a police station for the investigation of offences under this Act.

31. Jurisdiction to try offences.— No Magistrate shall try an offence under this Act unless he is a Presidency Magistrate or a Magistrate of the first class, or a Magistrate of the second class specially empowered by the Local Government in this behalf.

32. Presumption from possession of illicit articles.— In trials under this Act it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under Chapter III in respect of—

(a) any dangerous drug;

(b) any poppy or coca plant growing on any land which he has cultivated;

(c) any apparatus specially designed or any group of utensils specially adapted for the manufacture of any dangerous drug; or

(d) any materials which have undergone any process towards the manufacture of a dangerous drug, or any residue left of the materials from which a dangerous drug has been manufactured,

for the possession of which he fails to account satisfactorily.

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33. Liability of illicit articles to confiscation.—(1)

Whenever any offence has been committed which is punishable under Chapter III, the dangerous drug, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.

(2) Any dangerous drug lawfully imported, transported, manufactured, possessed, or sold along with, or in addition to, any dangerous drug which is liable to confiscation under sub-section (1), and the receptacles, packages and coverings in which any dangerous drug, materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages, and the animals, vehicles, vessels and other conveyances used in carrying the same, shall likewise be liable to confiscation :

Provided that no animal, vehicle, vessel or other conveyance shall be liable to confiscation unless it is proved that the owner thereof knew that the offence was being, or was to be or was likely to be, committed.

34. Procedure in making confiscations.—(1) In the trial of offences under this Act, whether the accused is convicted or acquitted, the Court shall decide whether any article seized under this Chapter is liable to confiscation under section 33 ; and, if it decides that the article is so liable, it may order confiscation accordingly.

(2) Where any article seized under this Chapter appears to be liable to confiscation under section 33, but the person who committed the offence in connection therewith is not known or cannot be found, the Collector or other officer authorised by the Local Government in this behalf, may inquire into and decide such liability, and may order confiscation accordingly :

Provided that no order of confiscation of an article shall be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim :

Provided, further, that, if any such article, other than a dangerous drug, is liable to speedy and natural decay, or if the Collector or other officer is of opinion that its sale would

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be for the benefit of its owner, he may at any time direct it to be sold ; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale.

(3) Any person not convicted who claims any right to property which has been confiscated under this section may appeal to the Court of Session against the order of confiscation.

35. Power to make rules regulating disposal of confiscated articles and rewards.—The Governor-General in Council may make rules to regulate—

- (a) the disposal of all articles confiscated under this Act ; and
- (b) the rewards to be paid to officers, informers and other persons out of the proceeds of fines and confiscations under this Act.

CHAPTER V.

MISCELLANEOUS

36. Provisions regarding rules.—(1) All rules made under this Act shall be subject to the condition of previous publication.

(2) Rules made by the Governor-General in Council shall be published in the *Gazette of India*, and rules made by a Local Government shall be published in the local official Gazette or, where there is no local official Gazette, in the *Gazette of India*.

(3) Rules made by a Local Government shall not be inconsistent with any rules made by the Governor-General in Council, and shall be void to the extent of any such inconsistency.

37. Recovery of sum due to Government.—(1) Any arrear of any licence fee chargeable by any rule made under this Act may be recovered from the person primarily liable to pay the same or from his surety (if any) as if it were an arrear of land-revenue.

(2) When any person, in compliance with any rule made under this Act, gives a bond (other than a bond under section 18) for the performance of any act, or for his abstention

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the amount to be paid in case of such breach may be recovered from him or from his surety (if any) as if it were an arrear of land-revenue.

38. Application of the Sea Customs Act, 1878.—All prohibitions and restrictions imposed by or under this Act on the import into British India, the export from British India, and the transhipment of dangerous drugs, shall be deemed to be prohibitions and restrictions imposed under section 19 or section 134 of the Sea Customs Act, 1878, and the provisions of that Act shall apply accordingly : VIII.

Provided that, where the doing of anything is an offence punishable under that Act and under this Act, nothing in that Act or in this section shall prevent the offender from being punished under this Act.

39. Saving of local and special laws.—(1) Nothing in this Act or in the rules made thereunder shall affect the validity of any enactment of a local Legislature for the time being in force, or of any rule made thereunder, which imposes any restriction not imposed by or under this Act, or imposes a restriction greater in degree than a corresponding restriction imposed by or under this Act, on the consumption of or traffic in any dangerous drug within British India.

(2) Nothing in this Act or in the rules made thereunder shall affect the validity of the Opium Act, 1857 : xiii.

Provided that, where the doing of anything is an offence punishable under that Act and under this Act, nothing in that Act or in this sub-section shall prevent the offender from being punished under this Act.

40. Amendment of certain enactments.—The enactments specified in the first three columns of Schedule II are hereby amended to the extent and in the manner mentioned in the fourth column thereof.

41. Saving of things already done.—When anything done under any enactment specified in the first three columns of Schedule II is in force immediately prior to the commencement of this Act, it shall be deemed, as from the commencement of this Act, to have been done under this Act or under that enactment as hereby amended, as the case may require.

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SCHEDULE L.

BOND TO ABSTAIN FROM THE COMMISSION OF OFFENCES UNDER
THE DANGEROUS DRUGS ACT, 1930.

(See section 18.)

Whereas I (name), inhabitant of (place), have been called upon to enter into a bond to abstain from the commission of offences u
of the Dc
he
sa;
bi
India, the sum of rupees

(Where a bond with sureties is to be executed, add—)

We do hereby declare ourselves sureties for the above named that he will abstain from the

the King, Emperor of India, the sum of rupees

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SCHEDULE II.

AMENDMENTS OF LOCAL ACTS.

(See Section 40.)

Acts of the Governor-General in Council

Year.	No.	Short title.	Amendments.
1878	I	The Opium Act, 1878	<p>In section 3.—</p> <p>(a) for the definition of "opium" the following definition shall be substituted, namely :—</p> <p>"opium" means—</p> <ul style="list-style-type: none"> (i) the capsules of the poppy (<i>Papaver somniferum L.</i>); (ii) the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and transport; and (iii) any mixture, with or without neutral materials, of any of the above forms of opium, <p>but does not include any preparation containing not more than 0·2 per cent. of morphine, or a manufactured drug as defined in section 2 of the Dangerous Drugs Act, 1930"; and</p> <p>(b) for the definitions of "import" and "export" the following definitions shall be substituted, namely :—</p> <p>"import" means to import inter-provincially, as defined in clause (j) of section 2 of the Dangerous Drugs Act, 1930;</p> <p>"export" means to export inter-provincially, as defined in clause (l) of section 2 of the Dangerous Drugs Act, 1930; and".</p> <p>In section 4,—</p> <p>(a) clauses (a) and (b) shall be omitted; and</p> <p>(b) clauses (c), (d), (e) and (f) shall be re-lettered as clauses (a), (b), (c) and (d), respectively.</p>

PUNJAB EXCISE MANUAL.

(Schedule II.—Amendments of local Acts.)
Acts of the Governor General in Council—concl'd

Year.	No.	Short title.	Amendments.
1878	I	The Opium Act, 1878 —contd.	<p>In section 5.—</p> <p>(a) clauses (a) and (b) shall be omitted;</p> <p>(b) clauses (c), (d), (e) and (f) shall be re-lettered as clauses (a), (b), (c) and (d), respectively, and</p> <p>(c) in the proviso, for the word and figure "section 6" the words and figures "the Dangerous Drugs Act, 1930" shall be substituted</p> <p>Section 6 shall be omitted.</p> <p>In section 9.—</p> <p>(a) clauses (a) and (b) shall be omitted; and</p> <p>(b) clauses (c), (d), (e), (f) and (g) shall be re-lettered as clauses (a), (b), (c), (d) and (e), respectively</p> <p>In section 11.—</p> <p>(a) clause (a) shall be omitted,</p> <p>(b) in clause (c), for the word, brackets and letters "(d) or (e)" the word, brackets and letters "(b) or (c)" shall be substituted,</p> <p>(c) in clause (d), for the letter and brackets "(f)" the letter and brackets "(d)" shall be substituted, and</p> <p>(d) clause (b), and clauses (c) and (d) as so amended, shall be re-lettered as clauses (a), (b) and (c), respectively</p> <p>In section 14.—</p> <p>(a) the word "manufactured" shall be omitted; and</p> <p>(b) in clause (c), the words "and all materials used in the manufacture thereof" shall be omitted.</p> <p>Section 22 shall be omitted.</p>
1893	VI	The Indian Post Office Act, 1893.	<p>In section 23, after the words "any specified description" the words "or where the import or export into or from British India of goods of any specified description has been prohibited or restricted by or under any other enactment for the time being in force" shall be inserted.</p>

THE DANGEROUS DRUGS ACT (II OF 1930).

(Schedule II.—Amendments of local Acts.)
Regulations by the Governor-General in Council.

Year.	No.	Short title.	Amendments.
1915	I	The Excise Regulation, 1915.	<p>In section 2,—</p> <p>(a) for the definition of "export" in clause (8), the following definition shall be substituted, namely :—</p> <p>"(8) 'export' means to take out of the province :</p> <p>Provided that, in the case of intoxicating drugs specified in sub-clauses (i), (ii) and (iii) of clause (11), it means to export inter-provincially, as defined in clause (l) of section 2 of the Dangerous Drugs Act, 1930";</p> <p>(b) the definition of "hemp plant" in clause (9) shall be omitted ;</p> <p>(c) for the definition of "import" in clause (10), the following definition shall be substituted, namely :—</p> <p>"(10) 'import' means to bring into the province :</p> <p>Provided that, in the case of intoxicating drugs specified in sub-clauses (i), (ii) and (iii) of clause (11), it means to import inter-provincially, as defined in clause (j) of section 2 of the Dangerous Drugs Act, 1930";</p> <p>(d) for the definition of "intoxicating drug" in clause (11), the following definition shall be substituted namely :—</p> <p>"(11) 'intoxicating drug' means—</p> <ul style="list-style-type: none"> (i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (<i>Cannabis sativa L.</i>) including all forms known as <i>bhang</i>, <i>siddhi</i> or <i>ganja</i>; (ii) <i>charas</i>, that is, the resin obtained from the Indian hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport; (iii) any mixture, with or without neutral materials, of any of the above forms of hemp or any drink prepared therefrom; and

PUNJAB EXCISE MANUAL.

(Schedule II.—Amendments of local Acts.)
Regulations by the Governor-General in Council—concl'd.

Year.	No.	Short title.	Amendments
1915	1	The Barco Regulation, 1915—concl'd	<p>(i) any other intoxicating or narcotic substance which the Chief Commissioner may, by notification, declare to be an intoxicating drug, such substance not being opium, coca leaf, or a manufactured drug, as defined in section 2 of the Dangerous Drugs Act, 1930, "</p> <p>(ii) for the definition of " transport " in clause (19), the following definition shall be substituted, namely ~</p> <p>" (19) ' transport ' means to move from one place to another within the province; provided that import and export from British Baluchistan from and to the territories administered by the Agent to the Governor General in Baluchistan as such Agent shall be deemed to be transport".</p> <p>Section 3 shall be omitted.</p> <p>In sections 13, 33 and 50, the words " or coca ", wherever they occur, shall be omitted.</p> <p>In clause (d) of sub-section (1) of section 30, after the words " of any offence ", where they occur for the first time, the words " under the Dangerous Drugs Act, 1930 " shall be inserted.</p> <p>In section 23, the proviso shall be omitted.</p> <p>Madras Act.</p>
1916	1	The Madras Abattoir Act, 1916	<p>In section 3.—</p> <p>(i) for the definition of " intoxicating drug " in clause (13) the following definition shall be substituted, namely ~</p> <p>" (13) ' intoxicating drug ' means—</p> <p>(i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (<i>Cannabis sativa L.</i>), including all forms known as bhang, reddi or ganja;</p>

THE DANGEROUS DRUGS ACT (II OF 1930).

(Schedule II.—Amendments of local Acts.)

Madras Act—contd.

Year.	No.	Short title.	Amendments.
1886	I	The Madras Abkari Act, 1886—contd.	<p>(ii) <i>charas</i>, that is, the resin obtained from the Indian hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport;</p> <p>(iii) any mixture, with or without neutral materials, of any of the above forms of intoxicating drug, or any drink prepared therefrom; and</p> <p>(iv) any other intoxicating or narcotic substance which the Governor in Council may, by notification, declare to be an intoxicating drug, such substance not being opium, coca leaf, or a manufactured drug, as defined in section 2 of the Dangerous Drugs Act, 1930;"</p> <p>(b) to the definition of "import" in clause (15) the following proviso shall be added, namely :—</p> <p>"Provided that, in the case of intoxicating drugs specified in sub-clauses (i), (ii) and (iii) of clause (13), it means to import inter-provincially, as defined in clause (j) of section 2 of the Dangerous Drugs Act, 1930;" and</p> <p>(c) to the definition of "export" in clause (16) the following proviso shall be added, namely :—</p> <p>"Provided that, in the case of intoxicating drugs specified in sub-clauses (i), (ii) and (iii) of clause (13), it means to export inter-provincially, as defined in clause (l) of section 2 of the Dangerous Drugs Act, 1930".</p> <p>In section 8, after the word "importation" the words "into British India" shall be inserted.</p> <p>In section 12,—</p> <p>(a) the words "or Indico" shall be omitted;</p> <p>(b) the words "or coca plant (<i>Erythroxylon coca</i>)" shall be omitted; and</p>

PUNJAB EXCISE MANUAL.

(Schedule II.—Amendments of local Acts.)
Madras Act—concl'd.

Year	No.	Short title	Amendments
1895	I	The Madras Abkari Act, 1895—concl'd	<p>(c) the words "or coca", where they occur after the word "hemp", shall be omitted</p> <p>In clause (e) of section 53,—</p> <p>(a) the words "or India" shall be omitted ;</p> <p>(b) the words "the coca plant (<i>Erythroxylon coca</i>)" shall be omitted; and</p> <p>(c) for the word "plants" the word "plant" shall be substituted</p>
1878	V	The Bombay Abkari Act, 1878	<p>In section 3,—</p> <p>(a) for the definition of "intoxicating drug" in clause (9) the following definitions shall be substituted, namely :—</p> <p>"(9) "intoxicating drug" means—</p> <p>(i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (<i>Cannabis sativa L.</i>), including all forms known as bhang, hashish or ganja,</p> <p>(ii) charas, that is, the resin obtained from the Indian hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport;</p> <p>(iii) any mixture, with or without neutral materials, of any of the above forms of intoxicating drug, or any drink prepared therefrom; and</p>

THE DANGEROUS DRUGS ACT (II OF 1930).

(Schedule II.—Amendments of local Acts.)

Bombay Act—concl'd.

Year.	No.	Short title.	Amendments.
1878	V.	The Bombay Abkari Act, 1878—concl'd.	<p>(iv) any other intoxicating or narcotic substance which Government may, by notification in the <i>Bombay Government Gazette</i>, declare to be an intoxicating drug, such substance not being opium, <i>coca leaf</i>, or a manufactured drug, as defined in section 2 of the Dangerous Drugs Act, 1930.</p> <p>(9-A) 'hemp' means any variety of the Indian hemp plant from which intoxicating drugs can be produced;"</p> <p>(b) to the definition of "to import" in clause (10) the following proviso shall be added, namely :—</p> <p>"Provided that, in the case of intoxicating drugs specified in sub-clauses (i), (ii) and (iii) of clause (9) and hemp, it means to import inter-provincially, as defined in clause (j) of section 2 of the Dangerous Drugs Act, 1930 ;" and</p> <p>(c) to the definition of "to export" in clause (10) the following proviso shall be added, namely :—</p> <p>"Provided that, in the case of intoxicating drugs specified in sub-clauses (i), (ii) and (iii) of clause (9) and hemp, it means to export inter-provincially, as defined in clause (l) of section 2 of the Dangerous Drugs Act, 1930 ;".</p> <p>Clause (2) of sub-section (1) of section 16 shall be omitted.</p> <p>In clause (c) of sub-section (1) of section 32, after the words "of any offence", where they occur for the second time, the words "under the Dangerous Drugs Act, 1930", or "shall be inserted.</p> <p>In sub-section (1) of section 32, the proviso shall be omitted.</p> <p>Sections 43-A and 43-B shall be omitted.</p>

PUNJAB EXCISE MANUAL.

(Schedule II.—Amendments of local Acts.)

Bengal Act.

Year	No.	Short title	Amendments
1909	V	The Bengal Excise Act, 1909	<p>In section 2,—</p> <p>(a) clause (4) shall be omitted.</p> <p>(b) to the definition of "export" in clause (1) the following proviso shall be added, namely—</p> <p>"... in the case of intoxicating drugs ..."</p> <p>(c) to the definition of "import" in clause (2) the following proviso shall be added, namely—</p> <p>"Provided that, in the case of intoxicating drugs specified in sub-clauses (i), (ii) and (iii) of clause (13), it means to import intra-provincially, as defined in clause (j) of section 2 of the Dangerous Drugs Act, 1930", and</p> <p>(d) for the definition of "intoxicating drug" in clause (13) the following definition shall be substituted, namely—</p> <p>"(13) 'intoxicating drug' means—</p> <p>(i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (<i>Cannabis sativa L.</i>), including all forms known as bhang, sindhi or ganja;</p> <p>(ii) charas, that is, the resin obtained from the Indian hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport;</p> <p>(iii) any mixture, with or without neutral materials, of any of the above forms of intoxicating drug, or any drink prepared therefrom; and</p>

THE DANGEROUS DRUGS ACT (II OF 1930).

(Schedule II.—Amendments of local Acts.)
Bengal Act—concl'd.

Year.	No.	Short title.	Amendments.
1909	V	The Bengal Excise Act, 1909—concl'd.	<p>(iv) any other intoxicating or narcotic substance which the Local Government may, by notification, declare to be an intoxicating drug, such substance not being opium, coca leaf, or a manufactured drug, as defined in section 2 of the Dangerous Drugs Act, 1930."</p> <p>Section 3 shall be omitted.</p> <p>In clause (d) of sub-section (1) of section 42, after the words "of any offence punishable", where they occur for the second time, the words "under the Dangerous Drugs Act, 1930, or" shall be inserted.</p> <p>In section 46, the proviso shall be omitted.</p>
1910	IV	The United Provinces Excise Act, 1910.	<p>In section 3,—</p> <p>(a) for the definition of "intoxicating drug" in clause (12) the following definition shall be substituted, namely :—</p> <p>"(12) 'intoxicating drug' means—</p> <ul style="list-style-type: none"> (i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (<i>Cannabis sativa L.</i>), including all forms known as <i>bhang</i>, <i>siddhi</i> or <i>ganja</i>; (ii) <i>charas</i>, that is, the resin obtained from the Indian hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport; (iii) any mixture, with or without neutral materials, of any of the above forms of intoxicating drug or any drink prepared therefrom; and (iv) any other intoxicating or narcotic substance which the Local Government may, by notification, declare to be an intoxicating drug, such substance not being opium, coca leaf, or a manufactured drug, as defined in section 2 of the Dangerous Drugs Act, 1930;"

PUNJAB EXCISE MANUAL.

(Schedule II.—Amendments of local Acts.)

United Provinces Act—concl'd.

Year.	No.	Short title.	Amendments
1910	IV	The United Provinces Excise Act, 1910—concl'd	<p>(b) to the definition of "import" in clause (17) the following proviso shall be added, namely :—</p> <p>"Provided that, in the case of intoxicating drugs specified in sub-clauses (i), (ii) and (iii) of clause (12), it means to import inter-provincially, as defined in clause (2) of section 2 of the Dangerous Drugs Act, 1930";</p> <p>(c) to the definition of "export" in clause (18) the following proviso shall be added, namely :—</p> <p>"Provided that, in the case of intoxicating drugs specified in sub-clauses (i), (ii) and (iii) of clause (12), it means to export inter-provincially, as defined in clause (2) of section 2 of the Dangerous Drugs Act, 1930"; and</p> <p>(d) the definition of "cocaine" in clause (23) shall be omitted.</p> <p>Section 5 shall be omitted.</p> <p>In clause (c) of sub-section (1) of section 34, after the words "of any offence punishable", where they occur for the second time, the words "under the Dangerous Drugs Act, 1930, or " shall be inserted.</p> <p>In sections 51, 54, 69 and 70, the word, figures and letter "section 60A" shall be omitted.</p> <p>In section 60, the words "If the offence is committed in respect of cocaine, with imprisonment which may extend to two years or with fine or with both, and in any other case" shall be omitted.</p> <p>Section 60 A and 60-B shall be omitted.</p>

Punjab Act.

1914	I	The Punjab Excise Act, 1914.	<p>In section 3,—</p> <p>(a) to the definition of "export" in clause (16) the following proviso shall be added, namely :—</p> <p>"Provided that, in the case of intoxicating drugs specified in sub-clauses (i), (ii)</p>
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THE DANGEROUS DRUGS ACT (II OF 1930).

(Schedule II.—Amendments of local Acts.)

Punjab Act—contd.

Year.	No.	Short title.	Amendments.
1914	I	The Punjab Excise Act, 1914—contd.	<p>and (iii) of clause (13), it means to export inter-provincially, as defined in clause (l) of section 2 of the Dangerous Drugs Act, 1930";</p> <p>(b) to the definition of "import" in clause (12) the following proviso shall be added, namely:—</p> <p>"Provided that, in the case of intoxicating drugs specified in sub-clauses (i), (ii), and (iii) of clause (13), it means to import inter-provincially, as defined in clause (j) of section 2 of the Dangerous Drugs Act, 1930"; and</p> <p>(c) for the definition of "intoxicating drug" in clause (13) the following definition shall be substituted, namely:—</p> <p>"intoxicating drug" means—</p> <ul style="list-style-type: none"> (i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (<i>Cannabis sativa L.</i>), including all forms known as <i>bhang</i>, <i>siddhi</i> or <i>ganja</i>; (ii) <i>charas</i>, that is, the resin obtained from the Indian hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport; (iii) any mixture, with or without neutral materials, of any of the above forms of intoxicating drug, or any drink prepared therefrom; and (iv) any other intoxicating or narcotic substance which the Local Government may, by notification, declare to be an intoxicating drug, such substance not being opium, coca leaf, or a manufactured drug, as defined in section 2 of the Dangerous Drugs Act, 1930". <p>In clause (b) of sub-section (I) of section 20, the words "or coca plant" shall be omitted.</p>

PUNJAB EXCISE MANUAL.

(Schedule II.—Amendments of local Acts.)
Punjab Act—concl'd.

Year.	No.	Short title	Amendments.
1914	I	The Punjab Excise Act, 1914—concl'd	In clause (d) of section 36, after the words "of any offence punishable", where they occur for the second time, the words "under the Dangerous Drugs Act, 1930, or " shall be inserted.
Burma Acts.			
1909	VII	The Burma Opium Law Amendment Act, 1909	For section 2 the following section shall be substituted, namely :— "2. In this Act, 'opium' includes opium as defined in section 3 of the Opium Act, 1878, and opium derivatives as defined in clause (j) of section 2 of the Dangerous Drugs Act, 1930."
In clause (a) of section 2, after the words and figures "Opium Act, 1878", the words and figures "or the Dangerous Drugs Act, 1930," shall be inserted.			
In sub-section (1) of section 4,— (a) for the words "the Opium Law for the time being in force" the words "any law for the time being in force relating to opium" shall be substituted; (b) after the words and figures "Opium Act, 1878", the words and figures "or section 22 of the Dangerous Drugs Act, 1930," shall be inserted, (c) in clauses (b) and (c), for the words "the Opium Law" the words "any law for the time being in force relating to opium" shall be substituted.			
1917	V	The Burma Excise Act, 1917.	In section 2,— (a) clause (3) shall be omitted; (b) to the definition of "Export" in clause (1) the following proviso shall be added, namely :— "Provided that, in the case of intoxicating drugs specified in sub-clauses (i), (ii)

THE DANGEROUS DRUGS ACT (II OF 1930).

(Schedule II.—Amendments of local Acts.)

Burma Acts—contd.

Year.	No.	Short title.	Amendments.
1917	V	The Burma Excise Act, 1917—contd.	<p>and (iii) of clause (l), it means to export inter-provincinally, as defined in clause (l) of section 2 of the Dangerous Drugs Act, 1930”;</p> <p>(c) clause (j) shall be omitted;</p> <p>(d) to the definition of “Import” in clause (k) the following proviso shall be added, namely :—</p> <p>“Provided that, in the case of intoxicating drugs specified in sub-clauses (i), (ii), and (iii) of clause (l), it means to import inter-provincinally, as defined in clause (j) of section 2 of the Dangerous Drugs Act, 1930”; and</p> <p>(e) for the definition of “Intoxicating drug” in clause (l) the following definition shall be substituted, namely :—</p> <p>“‘Intoxicating drug’ means—</p> <ul style="list-style-type: none"> (i) the leaves, small stalks and flower-ing or fruiting tops of the Indian hemp plant (<i>Cannabis sativa L.</i>), including all forms known as <i>bhang</i>, <i>siddhi</i> or <i>ganja</i>; (ii) <i>charas</i>, that is, the resin obtained from the Indian hemp plant, which has not been submitted to any manipulations other than those necessary for packing and trans-port; (iii) any mixture, with or without neutra materials, of any of the above forms of intoxicating drug, or any drink prepared therefrom; and (iv) any other intoxicating or narcotic substance which the Local Govern-ment may, by notification, declare to be an intoxicating drug, such substance not being opium, coca leaf, or a manufactured drug, as defined in section 2 of the Dangerous Drugs Act, 1930”.

PUNJAB EXCISE MANUAL.

(Schedule II.—Amendments of local Acts.)

Burma Acts—concl'd.

Year.	No.	Short title	Amendments.
1917	V	The Burma Excise Act, 1917—concl'd	<p>In section 11, for the words "the coca plant or any plant specified as an intoxicating drug by notification under section 2 (i) (iii)" the words "or any plant declared to be an intoxicating drug by a notification under section 2 (i) (iv)" shall be substituted.</p> <p>In clause (g) of section 30, for the words "coca plant or any plant specified as an intoxicating drug by notification under section 2 (i) (iii)" the words "or any plant declared to be an intoxicating drug by a notification under section 2 (i), (iv)" shall be substituted.</p> <p>Section 32 shall be omitted.</p> <p>In sections 44, 45, 46, 54, 55, 56 and 57, the word and figures "section 32" shall be omitted.</p> <p>Section 64 shall be omitted.</p>

Eastern Bengal and Assam Act.

1910	I	The Eastern Bengal and Assam Excise Act, 1910	<p>In section 3,—</p> <p>(a) to the definition of "Export" in clause (11) the following proviso shall be added, namely :—</p> <p>"Provided that, in the case of intoxicating drugs specified in sub-clauses (i), (ii) and (iii) of clause (13), it means to export inter-provincially, as defined in clause (2) of section 2 of the Dangerous Drugs Act, 1930";</p> <p>(b) to the definition of "Import" in clause (12) the following proviso shall be added, namely :—</p> <p>"Provided that, in the case of intoxicating drugs specified in sub-clauses (i), (ii) and (iii) of clause (13), it means to import inter-provincially, as defined in clause (3) of section 2 of the Dangerous Drugs Act, 1930"; and</p> <p>(c) for the definition of "Intoxicating drug" in clause (13) the following definition</p>
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THE DANGEROUS DRUGS ACT (II. OF 1930).

(Schedule II.—Amendments of local Acts.)
Eastern Bengal and Assam Act—contd.

Year.	No.	Short title.	Amendments.
1910	I	The Eastern Bengal and Assam Excise Act, 1910—contd.	<p>shall be substituted, namely :—</p> <p>“ ‘Intoxicating drug’ means—</p> <ul style="list-style-type: none"> (i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (<i>Cannabis sativa L.</i>), including all forms known as <i>bhang</i>, <i>siddhi</i> or <i>ganja</i>; (ii) <i>charas</i>, that is, the resin obtained from the Indian hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport; (iii) any mixture, with or without neutral materials, of any of the above forms of intoxicating drug, or any drink prepared therefrom; and (iv) any other intoxicating or narcotic substance which the Local Government may, by notification, declare to be an intoxicating drug, such substance not being opium, ooca leaf, or a manufactured drug, as defined in section 2 of the Dangerous Drugs Act, 1930”. <p>Section 5 shall be omitted.</p> <p>For clause (b) of sub-clause (I) of section 15 the following clause shall be substituted, namely :—</p> <p>“(b) no hemp plant (<i>Cannabis sativa L.</i>) shall be cultivated or collected;”.</p> <p>In clause (c) of sub-section (1) of section 29, after the words “of any offence punishable”, where they occur for the second time, the words “under the Dangerous Drugs Act, 1930, or” shall be inserted.</p> <p>For sub-clause (ii) of clause (e) of sub-section (2) of section 36 the following sub-clause</p>

PUNJAB EXCISE MANUAL.

(Schedule II.—Amendments of local Acts.)
Eastern Bengal and Assam Act—concl'd.

Year.	No.	Short title.	Amendments.
1910	I	The Eastern Bengal and Assam Excise Act, 1910—concl'd	<p>shall be substituted, namely :—</p> <p>"(ii) the cultivation of the hemp plant (<i>Cannabis sativa L.</i>), the collection of the spontaneous growth of such plant, and the preparation of any intoxicating drug from such growth ;".</p> <p>In clause (6) of section 53, the words "or any cocaine yielding plant of the genus <i>Erythroxylon</i>" shall be omitted.</p> <p>In clause (4) of sub-section (1) of section 67, the words "or cocaine yielding plant of the genus <i>Erythroxylon</i>" shall be omitted.</p> <p>In clause (a) of section 69, the words "cocaine-yielding plant of the genus <i>Erythroxylon</i>" shall be omitted.</p>

Bihar and Orissa Act.

1915	II	The Bihar and Orissa Excise Act, 1915	<p>In section 2,—</p> <p>(a) clause (4) shall be omitted;</p> <p>(b) to the definition of "export" in clause (10) the following proviso shall be added, namely :—</p> <p>"Provided that, in the case of intoxicating drugs specified in sub-clauses (i), (ii) and (iii) of clause (13), it means to export inter-provincially, as defined in clause (j) of section 2 of the Dangerous Drugs Act, 1930".</p> <p>(c) to the definition of "import" in clause (12) the following proviso shall be added, namely :—</p> <p>"Provided that, in the case of intoxicating drugs specified in sub-clauses (i), (ii) and (iii) of clause (13), it means to import inter-provincially, as defined in clause (j) of section 2 of the Dangerous Drugs Act, 1930".</p> <p>(d) the definition of "hemp plant" in clause (11) shall be omitted; and</p>
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THE DANGEROUS DRUGS ACT (II OF 1930).

(Schedule II.—Amendments of local Acts.)

Bihar and Orissa Act—contd.

Year.	No.	Short title.	Amendment.
1915	H	The Bihar and Orissa Excise Act, 1915— contd.	<p>(e) for the definition of "intoxicating drug" in clause (13) the following definition shall be substituted, namely :—</p> <p>"intoxicating drug" means—</p> <ul style="list-style-type: none"> (i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (<i>Cannabis sativa L.</i>), including all forms known as <i>bhang</i>, <i>siddhi</i> or <i>ganja</i>; (ii) <i>charas</i>, that is, the resin obtained from the hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport; (iii) any mixture, with or without neutral materials, of any of the above forms of intoxicating drug, or any drink prepared therefrom; and (iv) any other intoxicating or narcotic substance which the Local Government may, by notification, declare to be an intoxicating drug, such substance not being opium, coca leaf, or a manufactured drug, as defined in section 2 of the Dangerous Drugs Act, 1930". <p>Section 3 shall be omitted.</p> <p>In clauses (b) and (c) of section 13, the words "or any cocaine-yielding plant of the genus <i>Erythroxylon</i>" shall be omitted.</p> <p>In clause (d) of sub-section (1) of section 42, after the words "of any offence punishable," where they occur for the second time, the words "under the Dangerous Drugs Act, 1930, or" shall be inserted.</p> <p>In section 47,—</p> <p>(a) in clauses (b) and (c), the words "or any cocaine-yielding plant of the genus <i>Erythroxylon</i>" shall be omitted; and</p>

PUNJAB EXCISE MANUAL

(Schedule II.—Amendments of local Acts.)
Bihar and Orissa Act—concl'd.

Year	No.	Short title.	Amendments.
1915	II	The Bihar and Orissa Excise Act, 1915—concl'd.	<p>(b) the words "or, if the excisable article in respect of which an offence under clause (a), or clause (j) or clause (k) has been committed is cocaine, to imprisonment for a term which may extend to one year or to fine which may extend to two thousand rupees, or to both" shall be omitted.</p> <p>In section 61, the words "other than cocaine" shall be omitted.</p>
Central Provinces Act.			
1915	II	The Central Provinces Excise Act, 1915	<p>In section 2,—</p> <p>(a) clauses (3-i) and (4) shall be omitted.</p> <p>(b) to the definition of "export" in clause (9) the following proviso shall be added, namely—</p> <p>"Provided that, in the case of intoxicating drugs specified in sub-clauses (i), (ii) and (iii) of clause (12), it means to export inter-provincially, as defined in clause (1) of section 2 of the Dangerous Drugs Act, 1930";</p> <p>(c) clause (10) shall be omitted.</p> <p>(d) to the definition of "import" in clause (11) the following further proviso shall be added, namely—</p> <p>"Provided further that, in the case of intoxicating drugs specified in sub-clauses (i), (ii) and (iii) of clause (12), it means to import inter-provincially, as defined in clause (1) of section 2 of the Dangerous Drugs Act, 1930"; and</p> <p>(e) for the definition of "intoxicating drug" in clause (12) the following definition shall be substituted, namely:—</p> <p>"intoxicating drug" means—</p> <p>(i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (<i>Cannabis sativa L.</i>), including all forms known as bhang, reddhi, or ganja;</p>

THE DANGEROUS DRUGS ACT (II OF 1930).

(Schedule II.—Amendments of local Acts.)

Central Provinces Act—concl'd.

Year.	No.	Short title.	Amendments.
1915	II	The Central Provinces Excise Act, 1915— <i>concl'd.</i>	<p>(ii) <i>charas</i>, that is, the resin obtained from the Indian hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport;</p> <p>(iii) any mixture, with or without neutral materials, of any of the above forms of intoxicating drug, or any drink prepared therefrom; and</p> <p>(iv) any other intoxicating or narcotic substance which the Local Government may, by notification, declare to be an intoxicating drug, such substance not being opium, coca leaf, or a manufactured drug, as defined in section 2 of the Dangerous Drugs Act, 1930".</p> <p>Section 3 shall be omitted.</p> <p>In clause (b) of section 13, in clause (b) of sub-section (1) of section 17, in clause (a) of proviso (1) to section 26, in clause (c) of section 34, in section 50, and in clause (d) of sub-section (2) of section 62, the words "or coca plant" or "or the coca plant", as the case may be, shall be omitted.</p> <p>In clause (c) of sub-section (1) of section 31 after the words "of any offence", where they occur for the second time, the words "under the Dangerous Drugs Act, 1930, or" shall be inserted.</p> <p>In section 34, the proviso shall be omitted.</p>

APPENDIX A.
IMPORTANT RULINGS UNDER THE EXCISE ACT.

APPENDIX A.

IMPORTANT RULINGS UNDER THE EXCISE ACT.

It is necessary when passing sentence on an offender convicted of a contravention of the rules framed under an Act, to specify the rule contravened as well as the section under which the rule has been framed (*Punjab Record Criminal X, of 1888, and XIX of 1891*).

A magistrate who as Collector or Assistant Collector holds administrative charge of the district excise is not hereby disqualified under section 555 of the Criminal Procedure Code from trying cases under Excise Law (*Indian Law Reports Allahabad series, Volume XV, page 192*).

The fact that an offence has been detected by means of an illegal search is no bar to the prosecution of the offender for the offence (*Punjab Record Criminal, 87, of 1880 and 22 of 1900*).

The offence of selling liquor by retail when the seller has only a wholesale license is the same as that of selling without a license (*Indian Law Reports Calcutta series, 1889, page 799*).

A man who keeps illegally imported liquor in his possession for a long time is guilty of both illegal import and illegal possession (*Indian Law Reports Bombay series, Volume XIV, page 583*).

The following rulings of the Chief Court, under the corresponding section of Act XII of 1896, should be noted :—

A person who purchases liquor from a licensed vendor for the use of a European soldier in contravention of the vendor's license is liable to be convicted under section 108, Indian Penal Code, for a breach of the vendor's license though the latter himself, having sold in good faith, committed no offence (*Punjab Record Criminal, 55, September and October, 1905*).

The evidence of general repute as an habitual seller of illicit liquor is inadmissible (2 P. W. R., 1907, *Criminal*).

Emptying a vessel containing *lahan* is not sufficient for conviction under the Excise Act where the implements were found in the house of another person and everything that happened took place on those premises (2 P. W. R., 1907, *Criminal*).

In a case where 1 seer 11 $\frac{1}{2}$ chittaks of liquor, being a mixture of spirit and *lahan*, was found in the house of the accused, in which house his son also resided, and where it was impossible to say how much *lahan* was mixed with the spirit owing to an accident in distillation.

Held that the accused had rightly been convicted by the Magistrate. In the absence of proof of a joint possession, the possession must be deemed to be that of the accused, the owner of the house, the presence of a son making no difference, as it was not proved that the son had joined in the purchase, or that the liquor had been held jointly

PUNJAB EXCISE MANUAL.

with him, and that the whole of the liquor was country spirit within the meaning of section 3 (1) (i) of the Excise Act, the fact of lahan being mixed with it making no difference, as the whole was liquor containing alcohol obtained by distillation (Punjab Record 10 of 1901).

The destruction of evidence, e.g., a pot supposed to contain lahan is a presumption of guilt under section 114 of the Evidence Act.

Where a holder of a "ale-in-bond" charas license sold charas in bond to a person who at the time had no license of any kind for the sale of charas, and that he could not obtain a license until he took out a license, and that he delivered the charas on his behalf and that delivery was not effected by retention in bond in the hands of the Excise authorities on behalf of a person who could not obtain delivery until he took out a license, and that there was consequently no breach of the license (Punjab Record, Criminal 4, of February 1911).

Where some articles which might have been used for distilling country liquor were found in the yard of an unoccupied house adjoining that of the accused, the conviction was set aside by the Chief Court on the grounds that the prosecution should have proved and failed to prove that the accused had control over the premises and that the things had been put there with his knowledge (Punjab Law Report, Criminal 121, of 1904).

When several persons are in joint possession of any quantity of an excisable article, each is regarded in possession of the whole. Thus the limit of possession of country liquor being one seer, each of three persons may separately possess a seer. But if they convert their separate lots into one lot of 3 seers, each is liable to prosecution for possessing more than the prescribed quantity.

This view was taken by Bullock, J., in an unpublished ruling quoted in Punjab Record 13 of 1897, and has not been rejected in that judgment or in Punjab Record 10 of 1907 or in any later judgment. It was also held by Twomey, J., in a Full Bench ruling of the Rangoon Chief Court reported in the Rangoon Gazette of 8th August 1916.

An accused was found with 1½ seers of country spirit in his possession. He was carrying it in two bottles in his pockets and was riding on a mare at the time. He was convicted and sentenced to pay a fine of Rs. 20 and the mare on which he was riding was confiscated.

The Chief Court held that the order confiscating the mare even if legal, was harsh and unnecessary, and set it aside (Punjab Record, Criminal 10, of 1898).

Sensible.—Animals and conveyances liable to confiscation under the Act are those on which illicit liquor is loaded, and an animal of which a man is merely riding with such liquor in his pockets does not come under that description.

IMPORTANT RULINGS UNDER THE EXCISE ACT.

Punjab Chief Court Circular Memo. No. 6-3916-G., dated the 18th of July 1916, to all Sessions Judges, District Magistrates and Sub-Divisional Magistrates and First Class Magistrates in the Punjab and Delhi Province.

It has frequently come to the notice of the Chief Court that some Magistrates do not sufficiently realise the necessity for passing deterrent sentences under the Opium and Excise Acts, and allow themselves to be misled by appeals *ad misericordiam* or to be drawn into error by considerations that should not be allowed to influence their minds. Special attention is therefore invited to the case of *Crown versus Sujan Singh and others*, 19 Punjab Record (Criminal) of 1916. The points the Judges wish to emphasize are—

(a) The utter inapplicability to Excise and Opium cases of the principles underlying section 562, Criminal Procedure Code.

(b) The determination of the Legislature (that sentences should be adequate) as shewn by the enhancement in the latest Excise Act of maximum term of imprisonment.

(c) The futility of small fines and the necessity for substantial sentences of imprisonment.

2. Where Sessions Judges, District Magistrates and Sub-Divisional Magistrates come across cases in which Magistrates have gravely erred in this matter of adequate sentences, they should remember that the Chief Court may be applied to for enhancement.

No. 19, PUNJAB RECORD (CRIMINAL) OF 1916.

Before Hon'ble Sir Donald Johnstone, Kt., Chief Judge.

THE CROWN,—PETITIONER,

Versus

SUJAN SINGH AND OTHERS,—(*Convicts*),—RESPONDENTS.

CRIMINAL REVISION No. 185 OF 1916.

Criminal Procedure Code, Act V of 1898, section 562, first offender, punishment, offence under Punjab Excise Act, I of 1914, section 61.

Three persons were convicted under section 61 of the Punjab Excise Act, I of 1914, for the offence of manufacturing liquor contrary to law and being in possession of it and were sentenced by the Magistrate to 4 months' rigorous imprisonment and Rs. 50 fine each. On appeal the Sessions Judge reduced the sentences to 21 days' imprisonment and a fine of Rs. 20 in each case on the ground "that this is appellants' first offence, that the principles of section 562, Code of Criminal Procedure, applied, and that appellants are father and two sons."

Held that section 562 of the Code of Criminal Procedure was intended to apply to cases where offenders (and especially youthful offenders), without being persons of depraved character, may have succumbed to sudden temptation and the section could not properly apply to such an offence as that of manufacturing illicit liquor which

PUNJAB EXCISE MANUAL

implied a good deal of preparation. Also that as the offence probably escaped detection nine times out of ten and deprives Government of revenue, besides demoralising the people, deterrent sentences are necessary, and this was also the intention of the Legislature, as shown by the raising of the maximum period of imprisonment in the penal sections of the new Act as compared with the old Act.

*Revision from the order of H. A. Rose, Esquire Sessions Judge of Sialkot
dated the 30th of September 1915.*

Government Advocate, for Petitioner

B. N. Kapur, for Respondent

The judgment of the learned Chief Judge was as follows :—

Sir DONALD JOHNSTONE, Chief Judge.—In this case five persons, namely, Sujan Singh, Kharak Singh, Sher Singh, Pala Singh and Bulaqi were placed before a 1st Class Magistrate, Sialkot, charged under section 61 of the Excise Act of 1914 with manufacturing liquor contrary to law and being in possession of it. Of these persons Pala Singh and Bulaqi were acquitted and the other three were convicted and sentenced to four months rigorous imprisonment each and a fine of Rs. 50 each. These three persons appealed, and the learned Sessions Judge while holding that the convictions of the accused were certainly correct inasmuch as the appellants' conduct was in the circumstances most "convincing evidence of their guilt," yet considered that the sentences were excessive and reduced them to 3 months imprisonment and a fine of Rs. 20 in each case. The revised sentences are that the accused persons, who are father and two sons, are liable to imprisonment for a period of 3 months under section 602, Criminal I.

The Government have applied to this Court on the revision side for enhancement of the sentences and, after hearing arguments, it seems to me quite clear that the sentences are wholly inadequate. The accused persons were represented in this Court, and their learned counsel not only argued against enhancement of sentences but also tried to make out that there was doubt about the guilt of the accused.

After hearing what he had to say, I have formed the opinion that, as regards the guilt of the accused, there is no doubt whatever. The evidence for the prosecution is largely that of important officials of unimpeachable veracity.

prove

Singh

HOWEVER, this may be, I am quite certain that the accused did manufacture spirit contrary to law and were in possession of spirit contrary to law.

IMPORTANT RULINGS UNDER THE EXCISE ACT.

The reasons given by the learned Sessions Judge for reducing the sentences seem to me wholly inadequate. I fancy the idea of the Legislature in framing section 562 of the Criminal Procedure Code was that sometimes offenders (and in especial youthful offenders), without being persons of depraved character, may on occasion succumb to sudden temptation; for example, a poor youth without an anna in his pocket sees suddenly displayed before him some property which is worth his stealing. He, having never previously committed any crime whatever, succumbs to temptation and steals the property, and is caught. The Legislature very humanely and very properly allows the Magistrate in such a case as that to give the young man another chance and to deal with him under section 562.

But the offence of manufacturing illicit liquor stands on quite a different footing from all that sort of thing. It implies a good deal of preparation. In most cases it is done with the intention of selling to others. It can never be said that it is done in consequence of succumbing to sudden temptation. Further, it is an offence which probably escapes detection nine times out of ten, and it deprives Government of revenue, besides demoralising the people. Deterrent sentences in such circumstances are absolutely necessary. The profits of illicit distillation are so large that an offender would cheerfully pay a fine like Rs. 20 and still continue his evil courses. Lastly, it may be taken for granted in almost every case that, when a man is found by the police manufacturing illicit liquor, he has probably done it at least a dozen times before undetected so that the principle of "first-offence" has no application to such cases at all.

Further, the Legislature, in passing the new Excise Act of 1914, evidently realised that the old law was not sufficiently deterrent. Under the old Act (see section 51) only three months' rigorous imprisonment could be inflicted for possession of illicit liquor, but under section 61 of the present Act the maximum imprisonment has been raised to one year, and under section 74 of the present Act an enhanced maximum is provided for second offences of the same kind. All this seems to me to show that it is the duty of the Court to inflict substantial sentences in these cases. In my opinion the view that is sometimes expressed that, because an excise offence is a *malum prohibitum* and not a *malum in se*, the culprit should be mortified in pocket rather than in person, is wholly incorrect. In nine out of ten, excise offences are committed with the intention of making money, and the nefarious trade is usually very lucrative. In my opinion the Legislature intended that substantial terms of imprisonment should be awarded in these cases. In the present instance, even the sentence passed by the first Court seems to me to have been, if anything, too light, but in the circumstances in which the present case comes before me I am not disposed to go beyond it.

I allow this revision and restore the sentences passed by the first Court. The three accused persons will therefore be re-arrested and

PUNJAB EXCISE MANUAL.

will have to suffer on the whole, four months' rigorous imprisonment and pay a fine each of Rs. 50 or in default suffer 1½ months' more rigorous imprisonment.

Revision allowed.

Punjab Excise Act, I of 1914, Section 24 (3) and Excise Manual, Volume I, section 407—Possession of country liquor exceeding one seer by accused at a place other than that authorised by his license.

Held, that section 407 of Volume I of the Excise Manual empowers a license-holder to possess country liquor to any extent on the licensed premises, but does not entitle him to possess more than the prescribed amount elsewhere, and that that amount is fixed at one seer—vide Punjab Government Notification No 144-A, dated 1st February 1914 (Indian Law Report 4 Lahore, 10, year 1923).

Indian Law Reports, VII Lahore, page 82.

Before Sir Shadi Lal, Chief Justice.

THE CROWN—PETITIONER.

Vetus

PIARA SINGH.—Respondent.

Criminal Revision No. 1127 of 1925.

Punjab Excise Act, I of 1914, section 61 (1)—Punishment of offender, Criminal Procedure Code, Act V of 1898, section 562—First offender—whether section applicable in such a case.

~~It~~ held that an amendment to Article I
is
not
in
order.

also in drunkenness. Judicial experience also shows that the offence often escapes detection, and it is, therefore, necessary to impose a sentence which will have a deterrent effect.

IMPORTANT RULINGS UNDER THE EXCISE ACT.

The Sessions Judge, being of opinion that the sentence was inadequate, submitted the case to the High Court.

Judgment.

Sir Shadi Lal Chief Justice.—There is ample evidence on the record to prove the fact that on the night between the 14th and 15th of February, 1925, the accused Piara Singh was found distilling illicit liquor in his field ; and it is common ground that a distilling apparatus, a large quantity of *lahan* and two bottles containing illicit liquor were recovered from the field. The Courts below have concurred in holding that Piara Singh is guilty of an offence described in clause (a) of section 61, sub-section (1) of the Punjab Excise Act, I of 1914 ; and I have no hesitation in endorsing their conclusion.

The trial Magistrate has sentenced the convict to a fine of Rs. 200, but the learned Sessions Judge considers the sentence to be inadequate, and has submitted the record to this Court under section 438, Criminal Procedure Code, with a recommendation that the sentence be enhanced. In awarding punishment for an offence under the Excise Act the Courts must always bear in mind that illicit distillation implies a good deal of preparation and results, not only in the loss of excise revenue, but also in drunkenness. Judicial experience also shows that the offence often escapes detection, and as laid down in *Crown v. Sujan Singh, etc.* (1), it is necessary to impose a sentence which would have a deterrent effect. That this was the intention of the Legislature is clear from the fact that the maximum term of imprisonment for manufacturing illicit liquor was raised in 1914 from four months to one year, and has recently been further enhanced to two years,—*vide* section 2 of the Punjab Excise (Amendment) Act, II of 1925.

In view of the large profits derived from illicit distillation and the fact that the crime is not always detected, I do not think that the sentence of a mere fine can have any deterrent effect. Nor do I consider that the principle embodied in section 562, Criminal Procedure Code, which, as amended by Act XVIII of 1923, applies, not only to persons who are convicted of an offence punishable under the Indian Penal Code but also to those who are found guilty of an offence punishable under a special or a local Act, can be reasonably invoked by a person convicted of an offence like the present which, as I have already observed, not only implies previous preparation but often escapes detection. It cannot be urged on behalf of such a convict that he had succumbed to a sudden temptation, and that the Court should, therefore, exercise its discretion under the section in his favour and give him another chance. It is not desirable to lay down a hard and fast rule, and exceptional circumstances may outweigh these considerations and warrant the application of the rule enacted by the said section. Such cases are, however, rare and ordinarily a person convicted under section 61 (1) of the Excise Act is not entitled to the benefit of section 562, Criminal Procedure Code.

PUNJAB EXCISE MANUAL.

of opinion
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the convict

I accept the recommendation made by the learned Sessions Judge so far as to impose upon the convict a sentence of rigorous imprisonment for six months in addition to the fine inflicted by the Magistrate.

Revision accepted.

Punjab Excise Act, I of 1914, Section 61 (1) (a)—Possession of excisable article—Absolute alcohol—Punjab Excise Manual, Volume I, section 439—"Rectified Spirit"—meaning of.

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341, year 1926).

Punjab Excise Act, I of 1914, Section 61 (1) (a)—Illicit liquor—Onus probandi. Evidence to show strength of liquor found and that issued by authorised distilleries.

In a case under section 61 (1) (a) of the Excise Act the Chemical Examiner's report contained the following passage—"The suspected liquor, however, is not definitely distinguishable from the refined pot-still spirits made at the Karnal Distillery. Hence in my opinion the suspected liquor is of illicit origin, supposing that Karnal Distillery spirits have no possible access to the place of seizure" (i.e. Ferazepore).

Held, that until and unless the Crown had shewn that the liquor, on which this open verdict had been returned, could not in the ordinary way of business have come from the Karnal Distillery, the onus did not shift on to the accused of shewing that that was where he got it from.

Held, also, that another method of showing that liquor is illicit is that of proving the strength and showing that it is above that at which that method was of no avail, i.e., if the proof of the strength of the liquor is extremely low, say 40 per cent., then the liquor is 80 per cent. water.

Punjab Excise Act, I of 1914, Section 61 (1) (a)—Possessions—excisable articles are found in a house in which several persons are living—Presumptions.

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Held, that where articles are found in a house in such place or places as several persons living in the house may have access to, there is no presumption that these articles are in the possession and control of any other person than the house master. (*Indian Law Reports 11 Lah.*, 305, year 1930).

U. P. Excise Act (IV of 1910), Section 60 (a).—Possession of excisable liquor,—Liquor discovered in a room appurtenant to the house of the accused and of which he had the key.

Two brothers, Kalwars, lived jointly and had at one time held a license for the manufacture of country spirit. On a search being made in the house occupied by them a considerable quantity of unlicensed liquor was discovered in a room leading off the house and of which one of the brothers produced the key.

Held, that the liquor so discovered was in the possession of both the brothers, and it lay on them to account satisfactorily for it. Failing this, both might properly be convicted of an offence under section 60 (a) of the United Provinces Excise Act, 1910 (*Indian Law Reports 47 Allahabad* 611, year 1925).

Criminal Procedure Code (Act V of 1898), section 35—Distinct offences—Separate sentences—Bombay Abkari Act (V of 1878), Section 43 (1) (a) and (h).

Offences under clauses (a) and (h) of section 43 (1) of the Bombay Abkari Act, 1878, viz., possession of illicit liquor and possession of apparatus for manufacturing illicit liquor, are distinct offences, for which separate sentences can be passed (*Indian Law Reports 52 Bombay* 277, year 1928).

Madras Abkari Act (1 of 1886), section 55 (a)—Possession of liquor—License.

The word "possession" in section 55 (a) of the Madras Abkari Act does not mean constructive possession but actual possession (*Indian Law Reports 45 Madras* 842, year 1922).

Madras Abkari Act (1 of 1886), section 55 (1)—"Sale"—Meaning of—actual delivery—if necessary.

For the purpose of section 55 (1) of the Abkari Act (1 of 1886) a sale is complete as soon as the price is paid or agreed to be paid for ascertained goods and it is not essential that there should have been an actual delivery of the things sold (*Indian Law Reports 51 Madras* 385, year 1928).

Madras Abkari Act (1 of 1886)—Opium Act (1 of 1878)—Offences under—Private person—if it has locus standi to institute proceedings.

A private person has no *locus standi* to institute proceedings in respect of offences under either the Abkari Act or the Opium Act (*Indian Law Report 52 Madras* 613, year 1929).

APPENDIX B.
IMPORTANT RULINGS UNDER THE OPIUM ACT
(I of 1878).

APPENDIX B.

IMPORTANT RULINGS UNDER THE OPIUM ACT I of 1878.

In prosecutions under this section, the rule infringed should be stated, as well as the sections of the Act (*P. R. Criminal 19 of 1891*).

As regards possession, it should be noted that it is possession which constitutes the offence, not the amount that the person in possession may himself own. (*P. R. Criminal 13 of 1897*.)

Where a defence of joint possession is set up, it must be clearly proved, not only that a certain number of people lived in a house and may have joined in the purchase of the drug, and that it may have been held by one for the use of all, but that this has actually been the case. (*P. R. Criminal 13 of 1897*.)

This judgment has been extensively followed, e.g., in P. R. Criminal 31 of 1902, P. R. Criminal 34 of 1905.

It is no defence to a charge of being in possession of opium in excess of the quantity allowed by law, that the discovery was the result of an illegal search. The Opium Act contains no provision that a conviction cannot be based on such discovery. (*P.R. Criminal 11 of 1906*.)

As to the sale, the Chief Court have ruled that there was no misjoinder of accused persons where a licensee for the sale of opium, and another person, not holding a license, and allowed by him to sell opium, were tried together, the transaction in respect of which they had been sentenced being one (*P. L. R. Criminal 113 of 1906*.)

As regards export the Chief Court have ruled that where a parcel containing opium was tendered by the accused at a post office for despatch to Burma, but owing to information received was opened by the Postmaster and sent on eventually to Burma by the postal authorities marked "doubtful" with a view to the identification of the consignee, the parcel ceased to be in the post office on accused's behalf before it left India, and the opium was therefore not exported by the accused. (*P. R. Criminal 2 of 1911*.)

Held also, that accused's attempt to export the drug was not punishable, section 511 of the Penal Code not being applicable. (*P. R. Criminal 2 of 1911*.)

One W. S. was sent up for trial under section 9 of Act I of 1878 (Opium Act) upon a charge of having in his possession 7 tolas, $1\frac{1}{2}$ mashas of opium, which was discovered in an almirah in his house on the 5th December 1915. He was acquitted by the Magistrate on the ground that the opium in question was owned jointly by him and the other members of his family consisting of his father and his minor sons.

Following the principle laid down in 18. P. R. 1897 (Criminal), 31 P. R. 1902, and 34 P. R., 1905, it was held that the defence that he was in joint possession of it on behalf of his father and his two minor

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sons could not be accepted as sufficient. It was obvious that the respondent's minor children could not have been in joint possession of the opium with him, and it was equally clear that his father, who was an old man of about ninety and half-witted, could not possess the opium jointly with the respondent. The mere fact that the respondent gave opium to his father and his children to eat was of itself insufficient to show that he alone was not in possession of the quantity discovered in his amirah.

Held, that a statement by accented to the Excise Inspector that the opium found in his (accused's) amirah was his, although in the nature of a confession in this case, was admissible in evidence, the Excise Inspector not being a police officer. (P. R. Criminal 3 of 1918.)

Opium Act I of 1878, section 9 (c)—Brothers in joint ownership of a shop—presumption as to possession.

Opium was found in a shop which was jointly owned by two brothers, the elder of whom had had a license to keep opium which had expired.

Held, that the presumption might safely be made that the possession of the opium was that of the elder brother (I. L. R. 6 Lah. 311, year 1925.)

Opium Act I of 1878, section 9.—Importation of Opium into British India.

One G. R. consigned, under a feigned name, to himself from the native State of Kotah to Cawnpore certain bags of maize containing also a considerable quantity of opium. He travelled on the same train as the bags of maize. At Cawnpore he was arrested. The railway receipt for the bags of maize was found in his possession. He was then taken to the midway station and in his presence the truck on which the bags of maize were, was unloaded; the maize was examined and was found to contain opium.

Held, that G. R. was rightly convicted on these facts of an offence under section 9 of the Opium Act, 1878. (I. L. R. 46 Allahabad, 146, year 1924.)

APPENDIX C.
IMPORTANT RULINGS UNDER THE DANGEROUS DRUGS
ACT (II OF 1930).

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also directed him under section 18 of the Act to execute a bond for Rs 5,000 with two sureties in Rs 5,000 each to abstain from the commission of such offences for three years. An elaborate

The application for revision is made practically on the ground that the Courts erred in law in holding that the appellant, in order to clear himself, was bound to prove that the box had been "planted" on the shelf, that is to say, placed there by some one over whom he had no control and without his knowledge

There are two passages in the judgment of the Sessions Judge which have been criticised. The Magistrate had found that in the wall on the outer side of the shelf there was a hole through which a man could put his hand. It was also found that it was possible for a man to climb a tree outside the house, and from there to again access

..... and satisfied myself that a man of ordinary height could put his hand through the hole.....

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result may be that he will clear himself of guilt, but not that he will prove that he was not in possession of the offensive thing. The contention in fact appears to be merely an ingenious attempt to avoid the legal result of section 32 of the Dangerous Drugs Act, 1930. Under section 106 of the Evidence Act, "When any fact is specially within the knowledge of any person, the burden of proving that fact is upon him". If a box is found on a shelf which is in the possession of any person the burden of proving how it came there is upon him rather than on the person who finds it thereto in the course of a search.

* * * . * *

The Courts have found that although the possibility of "planting" existed the applicant had nevertheless failed to account satisfactorily for the possession.

Sir Charles Ross Alston has admitted that an accused person could not be given the benefit of the doubt in every case where such a possibility is proved. If it were so, indeed, it would be easy for dealers in dangerous drugs to carry on their trade if they were careful always to keep the drugs in places where "planting" could be shown to be possible. There must be very few cases indeed in which it is possible to prove that "planting" is absolutely impossible. But it is argued, the accused should have the benefit of the doubt in cases where "planting" has been shown to be "reasonably possible". Strictly, speaking there are no degrees in possibility. Either a thing is possible or impossible; and if it is possible, it is for the prosecution to prove that it is so probable that a prudent man ought, under the circumstances of the particular case to act upon the supposition that it exists, and it is for the defence to prove that it is so improbable that a prudent man ought under the circumstances of the particular case, to act upon the supposition that it does not exist.

In the present case the applicant's complaint is that he could not in the nature of things bring direct and positive evidence to prove that the cocaine had been thrust into the house from outside. The prosecution, however, were under a similar disability. How could they possibly prove by direct and definite evidence that the cocaine had not been thrust into the house from outside. It must be admitted that they did all they could to show their good faith, and everything that the law requires to protect the person whose house was searched, and indeed it has not been suggested before me that there was anything wrong with their procedure. It was open to the applicant to bring evidence to account for the presence of the cocaine in the house. He could not be expected, it is true, supposing him to be innocent, to bring direct evidence to prove how the cocaine found its way to his shelf, but he could have brought evidence to prove that he is a man of exemplary character and legitimate pursuits who is most unlikely to have dealings in cocaine, or that there are persons evilly disposed towards him who

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would be likely to get him into trouble by thrusting cocaine into his house. He has not, however, relied on any evidence of this kind for the defence, and I am asked at this stage to decide that in finding that he has not accounted satisfactorily for the possession of the cocaine, and in convicting him, the Courts have acted incorrectly, illegally improperly. In my opinion the Courts were bound to find that he was in possession of the cocaine and therefore to require him to account satisfactorily for it. All he has done is to prove that there was a bare possibility that the cocaine was planted. What he had to prove was

(*Laws and Rules No. 12 of U. P. Excise Supplement, dated 7-5-32.*)

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